

Thursday Morning
August 1, 2019
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

Connie consulted with Larry, a lawyer, about defending her in a contract lawsuit. Larry promised Connie a “guaranteed victory.” Connie hired Larry and agreed to pay him a monthly flat fee of \$1,000.

Connie began making monthly payments. After not hearing from Larry for six months, Connie called him. Larry said the case was “going great” and not to worry. At this point, Connie stopped paying the monthly fee. After not hearing from Larry for another six months, Connie went to the courthouse and discovered that Larry had never responded to the lawsuit and a default judgment had been entered against Connie.

Connie confronted Larry, who said the case was a “loser,” and he still expected Connie to pay the fees due for the past six months. The next day, Larry sent Connie an initial email that included only the following statement: “PAY NOW OR GO TO JAIL!”

Then, Larry began calling Connie repeatedly at home and at work, demanding payment. Larry also left voicemails where he called Connie a “deadbeat” and “loser,” and said he would file criminal charges against Connie and have her “thrown in jail.”

Extremely scared, Connie began having anxiety attacks that required medical attention. Connie consulted with another lawyer to discuss her options

Under the Texas Debt Collection Act:

- (A) What claims, if any, can Connie assert against Larry? Explain fully.**
- (B) What rights and remedies, if any, does Connie have against Larry? Explain fully.**

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

In 2010, Andy executed a valid will with the following dispositive provisions:

- (1) I give my 500 shares of stock in ABC Corp. to my brother Bill.*
- (2) I give my home in Austin, Texas, to my daughter Carol.*
- (3) I give my automobile to my nephew David.*
- (4) I give \$10,000 to my friend Ethan.*
- (5) I leave the residue of my estate to my friend Frank.*

In 2015, Andy sold his Austin home and used the proceeds to purchase a home in Dallas, Texas.

In 2016, Andy traded the Ford automobile he owned when he executed the will for a Chevy.

In 2018, Andy died.

When Andy died, he owned the following assets:

- (1) 1,000 shares of stock in ABC Corp., resulting from a 2 to 1 stock split in 2012 (**Stock**);
- (2) the home in Dallas (**Home**);
- (3) the Chevy automobile (**Chevy**); and
- (4) a bank account with a balance of \$20,000 (**Account**).

Andy was survived by Bill, Carol, David, and Frank.

Ethan, who died in 2014, is survived by his daughter Grace.

Assuming the will is admitted to probate, to whom should Andy's estate be distributed? Explain fully.

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

Question 3

Developer owned a subdivision (Subdivision) in Hill County, Texas (Hill County). In 2014, Developer sold Lot 7 in the Subdivision to Alice in an all-cash transaction. After the closing, the special warranty deed Alice received from Developer for Lot 7 was promptly recorded in the Hill County Real Property Records. In 2015, Developer sold the adjoining Lot 8 in the Subdivision to Alice in another all-cash transaction. Alice failed to record the special warranty deed she received from Developer for Lot 8 and instead put the special warranty deed in her safety deposit box.

Alice built a house on Lot 7, but she did not fence it in or otherwise visually join it with Lot 8. Her only visible activities on Lot 8 were planting a few trees and mowing the grass on both Lots.

In 2017, Developer, who had inadvertently failed to enter the sale of Lot 8 in its records, sold Lot 8 to Becky and gave Becky a special warranty deed that purported to convey to Becky the same Lot 8 in the Subdivision that Developer had previously conveyed to Alice. Becky borrowed the money to purchase Lot 8 from Lender. Payment of the debt to Lender was secured by a deed of trust covering Lot 8. The debt to Lender was evidenced by a promissory note to be repaid by a single payment at its maturity on June 1, 2018. Lender had no knowledge of the earlier conveyance by Developer of Lot 8 to Alice. The Lot 8 special warranty deed to Becky and the deed of trust were both properly and promptly recorded in the Hill County Real Property Records.

In February 2018, the Internal Revenue Service properly filed a Notice of Federal Tax Lien in the Hill County Real Property Records, giving notice of liens due to Becky's failure to pay income tax obligations.

In March 2018, Alice saw the unrecorded special warranty deed for Lot 8 in her safety deposit box and promptly recorded it in the Hill County Real Property Records.

Becky failed to pay Lender when the promissory note matured on June 1, 2018. Lender instructed the Trustee under its deed of trust to proceed with a nonjudicial foreclosure of Lot 8. Trustee complied with all legal requirements for a proper nonjudicial foreclosure, and Denise purchased Lot 8 at a foreclosure sale on July 3, 2018. The Trustee's deed to Denise stated, "Trustee binds Becky and Becky's successor's and assigns forever to warrant and defend Lot 8 against every person lawfully claiming Lot 8."

After purchasing Lot 8 at the foreclosure sale, Denise searched the Hill County Real Property Records and found the federal tax lien notice and the deed to Alice. Denise paid the federal tax lien. Denise, asserting that Lender breached its warranty of title, now seeks reimbursement from Lender for the amount of the federal tax lien. Becky asserts that she is the true owner of Lot 8.

- (A) Who owns Lot 8? Explain fully.**
- (B) Is Lender obligated to reimburse Denise for the payment Denise made to discharge the federal tax lien? Explain fully.**
- (C) With respect to the nonjudicial foreclosure sale, answer the following questions in accordance with the Texas Property Code:**
 - (1) How many days prior to the sale must a notice of sale must be sent to the applicable party or parties?**
 - (2) What day of the week would the sale have been held?**
 - (3) What time of day would the sale have been held?**
 - (4) Where would the sale have been held?**

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

Question 4

Solar, Inc., a Texas corporation (Solar), was formed in 2015. Solar's certificate of formation states that its purpose is "to manufacture or market solar cells and panels, and no other purpose." Solar's shares are traded on the Nasdaq Stock Market.

Boris purchased shares in Solar in 2015. Several months later, Solar's board of directors properly called a directors' meeting to consider whether Solar would invest \$500,000 in a California lithium ion battery manufacturer. Although not directors of Solar, Boris and other Solar shareholders appeared at the directors' meeting to object to the proposed investment. Over the shareholders' objections, Solar's board of directors voted unanimously to invest in the lithium ion battery manufacturer. A week later, Solar wired \$500,000 to its broker to complete the investment transaction.

Unhappy with Solar's investment in the battery manufacturer, Boris sold all of his shares to Clara the day after the investment transaction was completed. Days later it became public knowledge that Solar's board chair partially owned the battery manufacturer. Within a year, the value of Solar's investment in the battery manufacturer had fallen to zero, which caused the value of Solar's shares to drop dramatically.

- (A) Prior to selling his shares to Clara, what action, if any, could Boris have taken to prevent Solar from investing in the battery manufacturer? Explain fully.**
- (B) What action, if any, could Clara take to recover damages suffered by Solar as a result of the battery manufacturer investment? Explain fully.**

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

Question 5

In 2009, Husband and Wife married in Maverick County, Texas. Shortly after their wedding, Husband's father gave Husband and Wife 5,000 shares of Z-Corp stock (**Stock**), evidenced by a certificate issued to "Husband and Wife as their community property."

During the marriage, Husband and Wife divided the Stock dividends equally. Wife deposited her half of the dividends in the joint checking account used to pay monthly living expenses. Husband placed his half of the dividends in a savings account that he opened during the marriage in his own name (**Husband's Savings Account**). No other funds were deposited into Husband's Savings Account by Husband or Wife, and no withdrawals have been taken.

Husband and Wife acquired a residence in 2010 (**Residence**). The purchase price was \$250,000. Wife's mother gave Wife \$50,000 to use as a down payment. Husband and Wife co-signed a bank note for the remaining \$200,000. All payments on the bank note were made from Wife's employment earnings during the marriage. The balance owing on the note is now \$50,000.

In 2015, Husband and Wife purchased a ranch (**Ranch**). Both signed the promissory note to the seller to finance the entire purchase price of \$400,000. Title to Ranch was taken in Husband's name alone. In 2017, Wife inherited \$100,000. Wife contributed \$25,000 of her inheritance to build a new barn on Ranch and \$75,000 to pay down the principal on the \$400,000 note. Other than the \$75,000 payment, the remaining payments on Ranch note have come from Husband's employment earnings during the marriage.

In 2019, Husband files for divorce. The assets of Husband and Wife include the following:

- (1) Stock;
- (2) Husband's Savings Account;
- (3) Residence, currently valued at \$400,000; and
- (4) Ranch, currently valued at \$400,000.

(A) How should the Court characterize the interest in these four assets? Explain fully.

(B) What claims for reimbursement exist regarding the four assets? Explain fully.

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

Question 6

Manufacturer builds modular furniture for hotels. In 2017, Manufacturer purchased a new warehouse to expand her Houston, Texas business. Then the following events took place:

- March 1: Manufacturer borrowed \$25,000 (**Loan 1**) from First Bank to buy new equipment for manufacturing furniture. She signed a security agreement granting First Bank a security interest in equipment.
 - March 5: Equipment was delivered to Manufacturer.
 - March 10: Manufacturer borrowed \$50,000 (**Loan 2**) from Second Bank to purchase materials to make furniture and signed a security agreement giving Second Bank a security interest in “all of Manufacturer’s equipment and inventory.” The same day, Second Bank filed a financing statement with respect to Loan 2 with the Texas Secretary of State (Texas SoS).
 - March 15: First Bank filed a financing statement with respect to Loan 1 with the Texas SoS.
 - March 15: Manufacturer borrowed \$20,000 (**Loan 3**) from Third Bank to pay a contractor to renovate the new warehouse. Third Bank took a security interest in “all of Manufacturer’s inventory.” The same day, Third Bank filed a financing statement with respect to Loan 3 with the Texas SoS.
 - March 25: Hotel signed a written agreement with Manufacturer to purchase modular furniture for a new hotel in Austin, Texas. Hotel agreed to make installment payments to Manufacturer for 24 months and granted Manufacturer a security interest in the furniture that Hotel purchased for the Austin project.
 - April 1: Manufacturer borrowed \$100,000 (**Loan 4**) from Fourth Bank for general operating expenses. Fourth Bank took a security interest in “all of Manufacturer’s notes and obligations related to her accounts receivable.”
 - April 3: Manufacturer sold the installment contract with Hotel to Uncle for \$50,000 in cash. Uncle immediately took possession of the installment contract. Uncle did not know about any of Manufacturer’s bank loans.
 - April 5: Fourth Bank filed a financing statement with respect to Loan 4 with the Texas SoS.
- Manufacturer has now defaulted on all of her obligations.

Under the Texas UCC, which party has priority in the secured assets:

- (A) **First Bank vs. Second Bank regarding Manufacturer’s equipment? Explain fully.**
- (B) **Second Bank vs. Third Bank regarding Manufacturer’s inventory? Explain fully.**
- (C) **Fourth Bank vs. Uncle regarding the installment contract? Explain fully.**

**This concludes the morning portion of the Texas Essay Questions.
Write the pledge on the back of this question book.**

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Examinee # _____