

Thursday Afternoon
August 1, 2019
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

Copyright © 2019 Texas Board of Law Examiners

This material or any portion hereof may not be reprinted without the advance written permission of the Texas Board of Law Examiners.

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

Question 7

Hannah Jones owns a used book store. She agreed to sell some books for her friend Sarah Smith. Customer bought the books from Hannah and paid for them using three checks written on his account at ABC Bank. Customer wrote the checks to the order of Hannah Jones. Check 1 was for \$75. Check 2 was for \$150. Check 3 was for \$100. Hannah signed the back of Check 1 with her full name, "Hannah Jones." On the back of Check 2, she wrote "Pay to the Order of Sarah Smith." Below this Hannah signed her full name, "Hannah Jones." Hannah wrote nothing on the back of Check 3.

On her way home from work, Hannah stopped to eat dinner. She left the three checks on the front seat of her parked car. Thief broke into Hannah's car and stole the checks. Thief took Checks 1 and 2 to PhoneWorld to buy a new mobile phone, paying for the new phone by endorsing both checks "Sarah Smith." Thief took Check 3 to XYZ Bank, where Thief endorsed the check "Hannah Jones" and presented the check for deposit in Thief's account at XYZ Bank. XYZ Bank then presented Check 3 to ABC Bank, which paid the check and debited Customer's account for \$100. After ABC Bank paid Check 3, XYZ Bank credited Thief's account for \$100. A week later, Thief withdrew all funds from her account at XYZ Bank and closed her account. Thief's whereabouts are unknown.

- (A) Were the checks written by Customer to Hannah negotiable instruments? Explain fully as to each check.**
- (B) What rights does Hannah have against PhoneWorld for the value of Check 1? Explain fully.**
- (C) What rights does Hannah have against PhoneWorld for the value of Check 2? Explain fully.**
- (D) As between Customer, Hannah, ABC Bank, and XYZ Bank, who will bear the loss for Check 3? Explain fully.**

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

Question 8

Henry and Whitney, residents of Randall County, Texas, started dating in 2015 and began living together in 2016. Henry would frequently physically and verbally abuse Whitney. Whitney would leave their residence temporarily but would return when Henry apologized.

Henry and Whitney had a child, Cindy, in 2017. They married in early 2018. On December 1, 2018, Henry attacked Whitney while she was holding Cindy. That day, Whitney took Cindy and went to live with a friend in an apartment in Castro County, Texas. She reported the attack, and the Randall County district attorney helped her obtain a protective order. A Randall County District Court found that Henry committed family violence and entered a protective order against him for the benefit of Whitney and Cindy.

On February 1, 2019, Henry went to the Castro County apartment to find Cindy. He threatened to harm Whitney, violating the protective order.

Whitney earns \$1,000 take home pay each month working part-time and has no other means of support. She contributes \$750 a month for her portion of the apartment rent and utilities. She pays \$500 per month in childcare costs, which she has been paying with a credit card. Henry earns \$6,000 take-home pay each month. The cost of Cindy's health insurance, \$100 per month, is included in the deductions from his income.

Whitney wants a divorce.

- (A) Where should the divorce petition be filed? Explain fully.**
- (B) Can a Court properly name Henry and Whitney joint managing conservators in this case? Explain fully.**
- (C) What factors are appropriate for the Court to consider in awarding child support? Explain fully.**

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

Question 9

In 2015, Ana, Beatriz, and Carolina legally and properly registered a Texas limited liability partnership called On Your Feet, LLP (OYF) to operate a dance school. Ana was paid a salary for managing OYF's operations. Although Beatriz and Carolina were not involved in the management of OYF's business, they served as dance instructors for OYF and were paid a salary.

In 2016, Ana signed a contract (Contract) with Red Carpet Floors, Inc. (RCF) for reconstruction of OYF's dance floor. Ana signed Contract as "On Your Feet, LLP by Ana, Partner." Neither Beatriz nor Carolina participated in the contract negotiations with RCF, but they did meet the RCF representative, Dave, on two occasions: (1) when he toured OYF's dance studio, and (2) when he met Ana to sign the Contract. Ana introduced Beatriz and Carolina to Dave as OYF's "silent partners." RCF fully performed under Contract. OYF failed to pay all amounts due under Contract. RCF sued OYF, Ana, Beatriz, and Carolina for the balance due under Contract.

In 2017, OYF took all legally-required actions to become a limited liability company under Texas law, and changed its name to Twinkle Toes, LLC (TT). TT's company agreement (Agreement) designated Ana as its manager and identified Ana, Beatriz, and Carolina as TT's members. Agreement provided that TT assumed full ownership of all assets, debts, and liabilities of the former OYF. Beatriz and Carolina continued as employees of TT, serving as dance instructors. Upon learning of TT's creation, RCF amended its pleadings to add TT as a defendant.

In early 2018, during a ballet class at TT being taught by Beatriz, seven-year old Diana broke her ankle. The injury occurred after Beatriz allowed Diana, who had forgotten her slippers, to dance in inappropriate footwear. This violated TT's written policy, which was drafted by Ana in 2016 for the former OYF and was formally adopted by TT in 2017. On Diana's behalf, Diana's parents sued TT, Ana, Beatriz, and Carolina for negligence. In depositions taken in the suit, Beatriz and Carolina admitted that Ana had previously instructed them that no one was to dance without proper footwear.

- (A) In RCF's lawsuit, can each defendant be held liable for the balance due under Contract? Explain fully as to each defendant.**
- (B) In the lawsuit brought by Diana's parents, can each defendant be held liable for Diana's personal injuries? Explain fully as to each defendant.**

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

Question 10

Whiteacre and Greenacre are adjoining 100-acre tracts of land in Montgomery County, Texas. Ellen owned Whiteacre, and Frank owned Greenacre.

In May 2013, Ellen conveyed Whiteacre to Gwen by a properly executed and recorded warranty deed. In the warranty deed, Ellen reserved for herself “all oil, gas, and other minerals in and under and that may be produced from Whiteacre.”

On June 1, 2015, Ellen and Frank each entered into oil and gas leases with Oilco covering Whiteacre and Greenacre, respectively. Each lease provided that:

- The stated term was for “one year from June 1, 2015 and as long thereafter as oil and gas, or either of them, is produced in paying quantities from the leased tract.”
- Oilco had the right, at its option, to pool all or part of the leased acreage with other land in the immediate vicinity, if necessary or advisable to properly develop the leased acreage.
- In order to form a pooled unit, Oilco was required to sign and record in the Montgomery County Real Property Records an instrument identifying and describing the pooled acreage.
- Under the pooling clauses, production on pooled acreage would be treated as if it was from the leased acreage, whether or not the well was actually located on the leased acreage.

Frank’s Greenacre lease stated that the lease would remain in force only as to those lands within the pooled units upon which production was already occurring at the end of the primary term.

Ellen’s Whiteacre lease granted Oilco the right to conduct seismic or geophysical operations on Whiteacre.

On August 2, 2015, Oilco formed a unit by pooling the north half of Greenacre and the north half of Whiteacre and identified the unit in an instrument recorded as required in the leases. Oilco promptly drilled an oil well, on the pooled portion of Greenacre, and the well began to produce in paying quantities in September 2015.

In January 2016, Oilco entered the south part of Whiteacre and began seismic operations. Gwen objected because she did not want strangers on her land conducting such operations.

On July 1, 2016, Oilco filed an instrument identifying the south halves of Greenacre and Whiteacre as a pooled unit. Frank objected.

- (A) Is Oilco entitled to form a pooled unit that includes the south part of Greenacre? Explain fully.**
- (B) Can Oilco conduct seismic operations on Whiteacre in spite of Gwen’s objections? Explain fully.**
- (C) What must Gwen prove to make use of the Accommodation Doctrine?**

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

Question 11

Sam died intestate. Sam was survived by his wife Abby and Sam's two sons by a previous marriage, Tom and Victor. Seven months after Sam died, Abby gave birth to a daughter, Beth.

- (A) Upon Sam's death, who owns the following assets and in what proportions? Explain fully.**
- (1) A condominium in Harris County, Texas, that Sam and Abby purchased shortly after they were married and lived in throughout their marriage (Condo);**
 - (2) A vacation home on Lake Conroe that Sam inherited from his uncle (Lake House);**
 - (3) A joint with right of survivorship checking account in the names of Sam and Abby, with a balance of \$30,000 (Checking Account); and**
 - (4) A savings account in Sam's name, with a balance of \$100,000 (Savings Account).**
- (B) What rights, in addition to any ownership interests discussed above, does Abby have in the probate assets of Sam's estate? Explain fully.**

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

Question 12

Selma created two trusts, one for the use and benefit of herself (Trust 1) and the other for the use and benefit of her mother Barbara (Trust 2). Selma funded both trusts by depositing cash into two accounts with State Bank (Bank) and each trust named Bank as Trustee.

Trust 1 was irrevocable and included a spendthrift clause and the following: “Bank is given sole discretion to pay all or part of net income of the trust to Selma. Selma’s interest in the principal and income may not be transferred.”

Trust 2 authorized Bank to pay income to Barbara for her “support and maintenance,” but did not include any revocability language. Trust 2 included a spendthrift clause and the following: “Barbara’s interest in the principal and income may not be transferred.”

Which, if any, of the following debts and obligations incurred after creation of the trusts may be satisfied with the principal and/or income from the trusts? Explain fully as to each trust.

- (1) A judgment against Selma for unpaid child support;**
- (2) An IRS tax lien against Selma for unpaid taxes;**
- (3) A judgment against Selma in a contract dispute;**
- (4) The unpaid hospital bill owed by Barbara; and**
- (5) The unpaid charges on Barbara’s credit card for online betting.**

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.

**TEXAS BAR EXAM
SECURITY POLICY STATEMENT AND HONOR PLEDGE**

Anything not listed in the General Instructions as a Required Item or Permitted Item is a Prohibited Item. **Cell phones are Prohibited Items. If you bring a cell phone or any other Prohibited Item into the Secure Area, you may be immediately disqualified from the exam.** We may confiscate Prohibited Items from you, and retain them as necessary for inspection. We will report violations to the Board, who could nullify your exam results, conduct a hearing into your character and fitness, and/or take other actions.

The following acts also violate the Security Policy: obtaining, seeking to obtain, providing, or seeking to provide access to exam questions before the start of the exam; copying or receiving any information from any examinee during any testing session; communicating with anyone other than Board staff during any testing session; writing after time is called; taking exam materials outside of the exam room; failing to follow written and oral instructions from the Board; and any other act that might compromise the security or integrity of the exam. Any such misconduct may result in a hearing before the Board, the outcome of which could include nullification of your exam score or a finding that you lack the present good moral character required for admission to the bar.

Write **the following pledge** in your usual handwriting on the lines below. Enter your Examinee Number. If you cannot honestly write the pledge, contact a proctor or other Board staff immediately.

I have read and understand the Texas Bar Exam Security Policy. I have not given or received aid on the exam, or otherwise violated the Security Policy. If I am aware of anyone else having done so, I have already reported this to the Board of Law Examiners staff.

Examinee # _____