

Thursday Morning
February 27, 2020
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

Husband and Wife married in 2010 and have lived in Texas since that time. During the marriage, Husband became abusive, and the couple separated in June 2019. Wife filed for divorce in August 2019, and the matter was set for final hearing. Wife's petition asked for sole managing conservatorship of the children and supervised visitation for Husband because of his violent behavior and alcohol abuse. Husband's petition asked for joint managing conservatorship and that he be allowed equal access to the children. Neither party requested a jury trial.

At the February 2020 final hearing before the court, Wife introduced into evidence a 2019 police report regarding Husband's arrest for public intoxication and physical assault of Wife in front of the children. No charges resulted from the arrest.

The judge named the parties joint managing conservators, with Wife establishing the primary residence of the children. Husband was awarded access to the children pursuant to a Standard Possession Order except for the third weekend of each month. Husband was also ordered to take anger management classes.

Wife made a written motion for the judge to interview the parties' children, ages 9 and 14, in chambers regarding their preference as to primary residence. The judge denied the motion.

During the hearing, the paternal grandmother (Grandmother) testified on behalf of Husband. During her testimony, she stated that she was willing to take care of the children during Husband's periods of possession. The judge, with no request by Wife or Husband, named Grandmother a possessory conservator and awarded her access to the children on the third weekend of each month.

Explain fully whether the following decisions by the court were correct:

- (1) Naming the parties joint managing conservators;**
- (2) The terms of Husband's access and possession;**
- (3) Denying Wife's motion to interview the children; and**
- (4) Naming Grandmother a possessory conservator with access to the children.**

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

In 2010, Ann and Brad, a married couple, purchased Greenacre, a 100-acre tract of land in Wise County, Texas. They immediately began to live in the home on Greenacre. When her uncle died in 2012, Ann inherited Whiteacre, a 50-acre tract of land also located in Wise County. Greenacre and Whiteacre were within a few miles of each other and were not within the city limits or extraterritorial jurisdiction of any town. Brad and Ann farmed both Greenacre and Whiteacre as their primary source of income.

In 2013, Big Oil proposed favorable terms to Ann for an oil and gas lease. Without consulting Brad, Ann signed a lease with a three-year primary term describing both Greenacre and Whiteacre.

In 2014, Ann inherited her parents' home located in the City of Dallas, Dallas County, Texas (Dallas Property). In 2015, Ann borrowed \$50,000 from Bank to pay her personal credit card debt. To secure the loan, Ann granted Bank a Deed of Trust lien on the Dallas Property. Ann rented the Dallas Property to a series of tenants.

On January 1, 2018, Ann leased the Dallas Property to Thomas. Thomas and Ann signed a one-year lease, and Thomas paid Ann \$1,800 for January rent and another \$1,800 for a security deposit. On January 10, 2018, a lightning strike at the Dallas Property damaged a water line preventing the flow of water from the water main to the home. The damage was a casualty loss covered by Ann's property insurance. On January 11, Thomas gave immediate written notice of the damage to Ann. Later, on January 15, he gave written notice to Ann that he was terminating the Dallas Property lease, and Thomas moved out, leaving the Dallas Property in otherwise excellent condition. Ann did not begin repairs to the water line until January 31 when she received insurance proceeds to repair the damage. Thomas demanded that Ann pay him \$500 in damages because of her delay in making the repairs. He also demanded a full refund of the January rent and security deposit.

After Ann repaired the water line, Brad and Ann moved into the Dallas Property. After moving in, Ann defaulted on her loan payment to Bank. Bank notified Ann that it intended to foreclose. Ann asserted that Bank did not have a valid lien because the Dallas Property was her homestead.

- (A) Did Big Oil obtain a valid oil and gas lease as to Greenacre and Whiteacre? Explain fully.**
- (B) Did Thomas properly terminate the Dallas Property lease, and is he entitled to recover the damages, rent, and security deposit he has demanded? Explain fully.**
- (C) Will Ann prevail in her assertion that Bank's lien is invalid? Explain fully.**

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

If laptop, answer in the screen marked Question 3.

Question 3

Luke and Martha had two adult children, Chris and David. Martha always told her children that eventually her family's 300-acre ranch in Johnson County, Texas (Ranch) would be divided between the two of them. Chris asked for and received Martha's permission to build a house on Ranch. At that time, Martha also told Chris that, although she was leaving Ranch in her will to Luke, Chris should not worry because Luke's will would leave his estate to Chris and David, to be divided between the two children equally.

In 2012, Chris built a home on a 40-acre, separately fenced parcel of Ranch (Ranch House).

Martha died in 2015. Martha's will was probated, and her entire estate was conveyed to Luke in accordance with her will. Chris continued to live in Ranch House without objection.

In 2019, Luke died, and was survived by Chris and David, and by his 5-year old granddaughter Alice (David's daughter).

To their surprise, the family was not able to find a will where Luke kept his important papers. Later, as Chris and David were going through Luke's possessions, David came from his father's bedroom and proclaimed, "Look what I found!"

David produced an envelope that appeared to have been used to send a greeting card to Luke. On the back of the envelope were crayon drawings of butterflies (Alice's favorite insect) and the following writing, in blue ink:

I revoke all prior wills.

I leave the money in my accounts at First State Bank to my son, Chris.

I give my condo in Dallas, Texas, to my son, David.

I leave the Ranch to my granddaughter, Alice.

/s/ Luke

When Luke died, he owned the following assets:

- (1) A checking account at First State Bank with a balance of \$1,250 (Account);
- (2) The condominium in Dallas, Texas (Condo), valued at \$180,000;
- (3) The 300-acre Ranch, valued at \$1,500,000; and
- (4) A retirement plan, with a balance of \$120,000, naming Martha as the beneficiary (Retirement Plan).

(A) What proof must David offer to probate the writing on the back of the envelope as Luke's will? Explain fully.

(B) Assuming the writing is admitted to probate as Luke's will, how should his estate be distributed and what rights, if any, will Chris, David, and Alice have in the property of the estate? Explain fully.

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

Question 4

At a weekend family gathering, Alex, an insurance agent, told various family members about his “great” new job selling homeowner’s insurance policies for “an awesome company,” Complete Coverage Insurance (CCI). Alex said that CCI had an “impeccable reputation for paying claims” and provided “the most complete coverage available!” Carolina, Alex’s sister-in-law, commented that she had seen CCI advertisements recently on YouTube claiming “100% Customer Satisfaction!”

The following Monday, Carolina, went to Alex’s office to ask about insurance coverage for her home. Alex told Carolina that the CCI policy would “absolutely cover the house regardless of the extent or source of the damage.” Alex also told Carolina that she could save “big” if she switched auto insurance coverage to CCI. Carolina agreed to the change and requested auto liability coverage up to \$100,000. Her monthly insurance premium went down by 20 percent.

Six months later, during a hard freeze, a pipe in Carolina’s house broke, causing significant damage that required Carolina to move out. She submitted her claim to CCI, but CCI denied any coverage after an investigator concluded that much of the damage was “pre-existing.” As a result of the damage to her house, Carolina had to move much further from her work and was very distraught over CCI’s denial.

While driving the longer commute to work, Carolina ran a red light and struck a vehicle operated by Pablo, who suffered injuries requiring surgery and three weeks in the hospital. Pablo sued Carolina and asked for damages in the amount of \$100,000. Carolina discovered that the policy limit on her auto liability insurance policy was actually \$30,000. Carolina hired a lawyer for advice.

Under Texas consumer protection laws, what rights, remedies, and damages, if any, can Carolina claim against Alex? Against CCI? Explain fully.

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

Question 5

For 10 years, Employer employed Assistant in his small business in Austin, Texas. Assistant's duties included paying bills. Assistant at all times had access to Employer's checks for his business account at First Bank. On January 1, 2019, Assistant gave Employer his two-week notice. Assistant angrily told Employer he was quitting because the holiday bonus Employer paid the previous month was not enough to pay Assistant's holiday bills and he had expected Employer to pay a bigger bonus. Assistant worked his final two weeks, and Employer does not know where Assistant is at this time.

Unknown to Employer, on his last day on the job, Assistant took a check from the middle of Employer's checkbook. When Assistant's car broke down, he did not have money for repairs. Assistant used the check he stole from Employer to pay \$800 to fix his car. During his employment, Employer had loaned money several times to Assistant when he had financial problems. Assistant always repaid the money. As of now, Assistant has not repaid the \$800.

Assistant wrote the \$800 check to Auto Shop on February 15, 2019, forging Employer's signature on the check. Auto Shop deposited the check in its account at Second Bank. When Second Bank submitted the check to First Bank for payment, First Bank paid the check and charged Employer's account for \$800 even though the signature on the forged check was not the usual machine signature used by Employer and did not look like Employer's machine signature. Pursuant to its policies, First Bank processed the \$800 check by computer and did not manually compare the signature on the \$800 check to the signature card for Employer's account. Employer received his monthly statement from First Bank on March 1, 2019 but did not open it until May 15, 2019, when he discovered the \$800 forged check. That same day, he called First Bank to report the forgery. First Bank has refused Employer's demand to credit his account for \$800.

(A) Discuss in detail the following defenses that First Bank may assert in response to Employer's demand to credit his account for the \$800 forged check:

- (1) Employer's negligence;**
- (2) Employer's failure to review his bank statement until May 15, 2019; and**
- (3) The "Trusted Employee" Rule (Texas Business and Commerce Code § 3.405(b)).**

(B) Discuss in detail whether First Bank was negligent in not comparing the signature on the \$800 forged check to the signature card for Employer's account.

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

Question 6

In January 2018, Adam, Bill, and Chuck properly formed a Texas limited liability partnership called GrillKing LLP (GrillKing). GrillKing manufactured and sold custom outdoor barbecue grills. GrillKing's written limited liability partnership agreement included the following terms:

- Adam, Bill, and Chuck would be the only partners.
- Adam would serve as Managing Partner.
- Bill and Chuck would be jointly responsible for designing and manufacturing GrillKing's products.

None of the partners would be liable to third parties for any debt, obligation, or liability of GrillKing, whether arising in contract, tort, or otherwise.

Adam would not be liable to GrillKing for negligence or gross negligence in the performance of his duties as Managing Partner.

In February 2018, Bank loaned GrillKing \$100,000 (Loan). Adam, on behalf of GrillKing, signed a promissory note designating GrillKing as "Borrower" and Bank as "Lender." Adam signed the note as "Managing Partner, GrillKing LLP," and Bill and Chuck each signed as "Partner, GrillKing LLP."

In June 2018, Customer was seriously injured when a GrillKing-manufactured grill exploded while Customer was attempting to light it according to the instructions provided by GrillKing. The explosion injured Customer and caused damage to his house. Several months before Customer purchased the grill, both Bill and Chuck became aware of a defect in the design of the grill that could cause it to explode when ignited. Bill and Chuck did nothing to fix the defect or warn customers of the potential danger. Neither Bill nor Chuck informed Adam about the defect, and Adam did not otherwise know or have reason to know the defect existed. Customer sued to recover for his personal injuries and property damage, naming GrillKing, Adam, Bill, and Chuck as defendants.

The costs of defending the lawsuit filed by Customer caused GrillKing to default on Loan. Bank filed suit against GrillKing, Adam, Bill, and Chuck as defendants.

- (A) Which of the named defendants, if any, can be held liable to Customer in his lawsuit? Explain fully.**
- (B) Which of the named defendants, if any, can be held liable to Bank in its lawsuit? 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 # _____