Thursday Afternoon
February 27, 2020
Essay Questions 7 - 12

TEXAS BAR EXAMINATION

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

Question 7

Amy, Betty, and Cassie agreed to start a for-profit pottery store in Texas called ABC Pottery Co. Ltd. (ABC). They filed no documents with the Texas Secretary of State, but did sign an agreement (Agreement) stating in its entirety the following:

> We hereby agree to jointly own and operate ABC Pottery Co. Ltd. We will share the profits equally, but only after our initial investments have been paid back. We will not be personally liable to third parties for any obligation of the business.

After signing Agreement, Amy and Betty each deposited $25,000 into ABC's bank account at Bank. As her investment, which the parties valued at $25,000, Cassie conveyed to ABC a deed to a warehouse she owned (Warehouse) that was to be used in ABC's business. Amy worked in ABC's store and was principally responsible for running the business, but she consulted with Betty and Cassie on major decisions.

While driving ABC's truck to deliver an order to a customer, ABC employee (Employee) ran a red light and collided with Motorist. Motorist sued ABC, Amy, Betty, and Cassie for personal injury and property damage.

Betty obtained a $50,000 loan (Loan) from Bank by executing a promissory note naming ABC as borrower and Bank as lender. She deposited the borrowed funds into her personal bank account and later used them to buy a vehicle for personal use. Amy and Cassie knew nothing about Loan or how Betty used Loan. Betty made regular payments to Bank on Loan from her personal funds.

Cassie negotiated a deal with a purchaser (Purchaser) to sell Warehouse to Purchaser for $110,000. Having made her deal with Purchaser, Cassie contacted Amy and Betty and proposed to buy Warehouse from ABC for $50,000. She did not tell Amy or Betty about her deal with Purchaser. Amy and Betty agreed, and Cassie paid $50,000 to ABC in exchange for the deed to Warehouse. The next day, Cassie sold Warehouse to Purchaser for $110,000.

After the Warehouse sale, Amy learned about Betty's Loan from Bank and Cassie's transaction with Purchaser. Amy immediately demanded an accounting from Betty and Cassie and refused to agree to distribute any ABC profits until she received the requested accountings.

(A) What form of business organization is ABC Pottery Co. Ltd.? Explain fully.

(B) To what extent, if any, are ABC, Amy, Betty, and Cassie liable to Motorist? Explain fully.

(C) To what extent, if any, are ABC, Amy, Betty, and Cassie liable on Loan? Explain fully.

(D) To what extent, if any, is Cassie liable to ABC, Amy, and Betty for the Warehouse sale profit? Explain fully.

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

Question 8

On July 1, Artist borrowed $100,000 (Loan) from Dallas Bank (Bank) to expand her art gallery (Gallery). Artist agreed to repay Loan to Bank in monthly installments. Artist granted Bank a security interest in a valuable painting (Painting) that she displayed in Gallery. Bank properly perfected its security interest in Painting, and Painting continued to hang in Gallery. The security agreement stated that Artist agreed that Bank could repossess Painting by any means if Artist failed to meet her Loan obligations.

Artist forgot to make the September 1 Loan payment. On October 15, Bank demanded payment of the entire remaining debt, as authorized under the terms of Loan. On October 31, when Artist had not complied, Bank hired burly debt collector (Collector) and sent him to Gallery to take possession of Painting. Collector took Painting off Gallery wall without asking Artist's permission. Artist screamed loudly, "Stop! Leave my Painting!" Collector ignored Artist. Collector waved a handgun as he left Gallery on his way to deliver Painting to Bank.

Bank paid $1,000 to Collector for his services but incurred no other costs in taking possession of Painting from Artist. The same day as Collector took Painting, Bank delivered written notice to Artist, stating that Bank would be selling Painting at an invitation-only auction scheduled for November 5 at Bank. The notice further stated that Bank would keep Painting if no acceptable offers were made at the auction.

Bank gave no public notice of the auction. Bank held the auction on November 3. Only two people attended and neither of them bid on Painting. Thereafter, Bank hung Painting in its Board Room and did not try again to sell it. On November 10, Bank notified Artist in writing that it intended to keep Painting. Artist believed Painting was worth far more than the $100,000 she owed Bank. The next day, Artist delivered a written objection to Bank's continued possession of Painting. Along with her objection, Artist tendered to Bank in cash the full amount of the debt, including principal and interest, plus the $1,000 in collection costs. Artist demanded return of Painting. Bank ignored Artist's objection and refused her tender of cash to repay the debt. Bank kept Painting on display in its Board Room and took no action to cancel Artist's debt.

(A) Did Bank comply with the Texas U.C.C. when Collector took possession of Painting at Gallery? Explain fully.

(B) Did Bank comply with the Texas U.C.C. in its attempt to sell Painting at auction? Explain fully.

(C) What remedies, if any, does Artist have against Bank under the Texas U.C.C. with regard to its refusal to return Painting to Artist? Explain fully.

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

Question 9

For over 20 years, Ward owned and operated a very successful floral shop in downtown Austin. Ward always maintained a steady supply of fresh flowers, but in November and December, the amount and value of his inventory increased significantly as he stocked up on holiday poinsettias, his most popular-selling item of the year. Shortly after receiving this year's shipment of poinsettias, Ward suffered a stroke, went into a coma, and was immediately hospitalized.

Ward does not have a durable power of attorney and has not authorized anyone to handle his floral shop business or personal matters. To preserve their $60,000 value, Ward's substantial inventory of poinsettias has to be sold within the next two weeks or risk being a total loss. Ward's personal assets include investments, rental property, and $100,000 in a checking account. Ward also has a pair of beloved dogs who live with him.

Ward's only living family member, his sister Selma, works as an artist and is constantly on the road. She and Ward have not been in touch in over 20 years. Ward's long-time and trusted best friend, Frances, is also a florist. She has struggled financially and was once sued over an unpaid debt. Ward's accountant, Alejandro, has handled Ward's business and personal tax matters for over 20 years.

Selma, Frances, and Alejandro each file applications to be appointed as Ward's guardian.

(A) Under the Texas Probate Code, what findings must a court make before appointing a guardian for Ward and what are the evidentiary standards to be applied by the court? Explain fully.

(B) How is the court likely to rule on the applications filed by Selma, Frances, and Alejandro, and is there a basis for a temporary guardianship? Explain fully.

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

Question 10

Emily, a Texas resident, died intestate in January 2020. Her husband Frank, whom she married in 1972, died in 2007. They had two biological children, Abby and Bob, and an adopted child, Cindy.

Abby died in November 2019, leaving two children, Sara and Tom.

Before she met Frank, Emily had given birth to William. Immediately after William's birth, Emily surrendered William for adoption, and another family legally adopted him. Emily had no contact with William until a month before her death, when William visited her.

Emily is survived by Bob, Cindy, Sara, Tom, William, and Frank's sister Jana, all of whom claim the right to inherit from Emily (Claimants).

At the time of her death, Emily owned the following assets:

(1) A certificate of deposit, held with Abby as joint tenant with right of survivorship (Certificate of Deposit);

(2) A life insurance policy that names Bob and Cindy as equal beneficiaries (Life Insurance);

(3) Real property in Texas (Real Property); and

(4) Tangible personal property (Personal Property).

(A) Which Claimants are entitled to inherit from Emily and which are not? Explain fully.

(B) To whom and in what proportions should the following assets be distributed? Explain fully.

(1) Certificate of Deposit;

(2) Proceeds of the Life Insurance;

(3) Real Property; and

(4) Personal Property.

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

Question 11

In 1965, Beaty, Inc. (Beaty) purchased Whiteacre, a 200-acre tract in Concho County, Texas, from Shipley, Inc. (Shipley). Shipley reserved from the Whiteacre sale a one-eighth royalty interest in any and all oil, gas, and other minerals.

In 1966, Beaty signed an oil and gas lease on Whiteacre to Riley Oil Inc. (ROI). ROI drilled a producing oil well and made accurate royalty payments to Beaty and Shipley until production ended in 1968. ROI then abandoned Whiteacre without properly plugging the well.

In August 2008, Beaty signed an oil and gas lease on Whiteacre with Newco, Inc. (Newco). In September 2018, Beaty sold an 80-acre tract out of Whiteacre to Gavin and retained the other 120 acres. The warranty deed to Gavin contained an exception to exclude Shipley's one-eighth royalty interest but did not contain a reservation of any interest in the oil and gas by Beaty.

In November 2018, Newco discovered the abandoned well located on the 120-acre Whiteacre tract retained by Beaty. As required by law, Newco reported to the Texas Railroad Commission that the well had not been properly plugged and might be a pollution hazard. ROI had been properly dissolved in 1975, and its sole shareholder, Riley, could not be located.

In December 2018, Newco drilled a producing oil well on Gavin's 80-acre tract. In January 2019, Newco sent a division order to Shipley. Shipley agreed that its royalty share was properly listed in the division order, but refused to sign the division order because it included a statement requiring Shipley to acknowledge responsibility for plugging the abandoned well.

Beaty and Gavin each claim to be entitled to the remaining share of the royalty payment due under the lease after payment to Shipley of its share. Newco has not made any royalty payments to Shipley, Beaty, or Gavin.

(A) Can the Texas Railroad Commission properly require Beaty, Shipley, or Newco to plug the abandoned well located on Whiteacre? Explain fully as to each.

(B) What are Newco's responsibilities to Shipley once Shipley refuses to sign the division order? Explain fully.

(C) To whom should Newco make the royalty payments for the well on Gavin's 80-acre Whiteacre tract? Explain fully.

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

Question 12

In 2005, Husband and Wife married in Texas. Husband graduated from law school, passed the bar, and became an associate in a local firm. Wife taught school. Husband controlled and directed all the finances of the family and rarely gave Wife any financial information beyond her own salary and discretionary spending amounts.

In 2015, Husband left his associate job and started his own restaurant. In 2017, the restaurant was not profitable, and Husband told Wife it was necessary for them to enter into a marital property agreement to partition their community estate. Husband drafted a marital property agreement that purported to partition to Wife, as her separate property, the family home and its contents, her vehicle, her teacher retirement account, and $10,000 in cash. The agreement partitioned to Husband, as his separate property, all interest in the restaurant, his vehicle, and his retirement account. The agreement also partitioned to each spouse, as separate property, each spouse's respective future earnings and income, after-acquired property in their respective names, and all increases and income from their respective separate properties. The agreement did not contain any details as to the value of any property.

When Husband gave Wife the draft agreement, he told her she should take it to an attorney for review. Wife mentioned the agreement to her book club friend, who was an attorney. The friend told Wife she should ask for more information about the value of the assets, audited financial statements for the restaurant, tax returns, and account statements. The friend told her she should then take all the information to an attorney who could fully advise her about the agreement.

When Wife asked Husband for this information, he showed her the restaurant's overdrawn bank account statement and stated that the only reason he suggested the agreement was to protect the family's assets from the creditors of the restaurant. He also told her that she should not worry too much about the language of the agreement because he would never try to enforce it against her. Relying on Husband's representations, Wife signed the agreement.

In July 2019, Husband sold the restaurant for $1.4 million dollars and bought a vacation house in his own name. In October, he moved out of the marital residence and into the vacation house. In December, he filed for divorce.

Wife retains you as her attorney in the divorce and asks the following:

What defenses are available to prevent enforcement of the agreement, and what is the likelihood that each defense will succeed? 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.

TEXAS BAR EXAM
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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.

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