



## **October 2020 Essay Questions 1-6**

### **Texas Essay Question 1**

Wanda ran her family's hair salon in Galveston, Texas for most of her adult life after her mother passed ownership of the salon to Wanda. On September 1, 2020, Wanda stocked up on a large quantity of a popular beauty product that cost approximately \$25,000. On September 15, 2020, Wanda suffered a debilitating stroke requiring around-the-clock home care to assist her with basic life functions and she became incapacitated to make any decisions.

The beauty product is perishable, so if the product is not sold within a matter of weeks, it will risk being a substantial or total loss. Wanda's sister Beatrice lives in Australia and has had no contact with Wanda for years. Wanda's closest friend Frances has experience in the cosmetic industry. Wanda's accountant has handled her business and personal tax matters for 10 years.

Wanda has no durable power of attorney and has not authorized anyone to handle either her hair salon or her personal affairs, with one exception. Wanda created a revocable trust with her nephew Ben as the trust's beneficiary. Wanda named Andrea as the trustee, but Andrea has declined to serve as the trustee. The trust has a spendthrift clause.

- A. Under the Texas Probate Code, what findings must a court make before appointing a guardian for Wanda and what evidentiary standard will the court apply?**
- B. If Beatrice, Frances, and Andrea all apply to be Wanda's guardian, which application is the court most likely to grant? Explain fully.**
- C. Will the court appoint Andrea as trustee or someone else? Explain fully.**
- D. Which, if any, of the following debts and obligations incurred after creation of the trust may be satisfied with the principal and/or income from the trust?**
  - 1. An IRS tax lien for Ben's unpaid taxes?**
  - 2. A judgment against Ben for unpaid child support?**
  - 3. Unpaid charges on Ben's credit cards for a large online gaming debt?**
  - 4. Wanda's health care bills?**

**Explain fully.**

## Texas Essay Question 2

On December 1, 2016, Diana, Elisabeth, and Rachel formed Déjà Vu, a clothing shop (Shop). Diana, who was within two years of retirement, had a great deal of experience in the retail clothing business and invaluable contacts with vendors and customers. Upon formation of Shop, Diana invested \$40,000, Elisabeth invested \$20,000, and Rachel invested \$10,000 in the business. The three partners did not sign any documents, but orally agreed that: (1) Diana would run the day-to-day operation of the business until December 31, 2018; (2) Diana would train Rachel to run the business; (3) on December 31, 2018, Diana would retire and the partnership would end; (4) Elisabeth and Rachel could form a new business if they wanted; and (5) any profits made by Shop would be first distributed to repay the partners' investment. The partners did not discuss the distribution of the profits.

At the end of 2017, Shop had achieved a \$100,000 after-tax net profit from operations. Diana, who had not received a salary but had worked at the store almost every day in 2017, demanded that she be paid \$30,000 as "salary from the \$100,000 profit." Elisabeth and Rachel agreed that \$30,000 was fair compensation for Diana's work but declined to pay Diana anything. This made Diana very angry. On January 31, 2018, Diana informed Elisabeth and Rachel, but no one else, that she was withdrawing from the partnership as of that date.

On February 1, 2018, Diana ordered \$10,000 in clothing from one of Shop's usual suppliers, Vendor. The clothing was delivered to Diana's house and subsequently sold by Diana for a \$15,000 profit to customers Diana had cultivated while working at Shop.

Elisabeth and Rachel continued to try to operate the retail store. Without Diana's involvement, vendors slowly stopped doing business with Shop, and Shop's customer base dwindled. Elisabeth and Rachel closed the business on March 31, 2018. At the time, Shop still owed Landlord \$5,000 in back rent, which remains unpaid. Weeks after Shop went out of business, Vendor called Rachel and demanded payment from Shop for the \$10,000 of clothing delivered to Diana in February.

- A. **What amount should each partner receive from the \$100,000 profit earned in 2017? Explain fully.**
- B. **Can Elisabeth and Rachel continue to operate Shop after Diana informed them that she was withdrawing from the partnership? Explain fully.**
- C. **What liability, if any, does Diana have to the partnership and/or Vendor with regard to the \$10,000 in clothing she ordered from Vendor? Explain fully.**
- D. **What liability, if any, does Diana have to Landlord? Explain fully.**

### **Texas Essay Question 3**

In 1997, Hill Country Sales Co. sold Lot 21 in a properly platted and previously recorded subdivision in Llano County, Texas to Lucia. Lucia recorded the warranty deed for Lot 21 in the Llano County Real Property Records. The warranty deed from Hill Country Sales Co. to Lucia did not include any reservation of oil, gas, or other minerals. The sale of Lot 21 to Lucia was inadvertently omitted from the records at Hill Country Sales Co.

In 1998, Lucia sold to Sara an undivided  $\frac{1}{4}$  interest in all the oil, gas, and other minerals, in, under or that might be produced from Lot 21. A mineral deed from Lucia to Sara was promptly recorded in the Llano County Real Property Records.

In 1999, Hill Country Sales Co., believing Lot 21 was still unsold, sold it to Mark, and gave him a warranty deed that purported to convey to Mark the same Lot 21. The warranty deed from Hill Country Sales Co. to Mark did not include any reservation of oil, gas, or other minerals. After recording his warranty deed for Lot 21 in the Llano County Real Property Records, Mark discovered the warranty deed conveying Lot 21 from Hill Country Sales Co. to Lucia and reported it to Hill Country Sales Co. Mark did not search the records further and was not aware of the recorded mineral deed from Lucia to Sara.

The salesperson at Hill Country Sales Co. told Mark that he could keep Lot 21 because Lucia would accept a conveyance of a different lot as a substitute for Lot 21. The salesperson discussed the idea with Lucia, but neither of them acted on the discussions. Later in 1999, Mark fenced Lot 21, built a cabin on it, and thereafter regularly used the cabin and timely paid all ad valorem taxes that accrued on Lot 21 from 1999 to the present. There have never been any drilling operations or production of any oil, gas, or other minerals from Lot 21.

- A. **Who owns the Lot 21 surface estate? Explain fully.**
- B. **Who owns the Lot 21 mineral estate? Explain fully.**

#### **Texas Essay Question 4**

Hardware Company (Hardware) makes copper knobs used on kitchen cabinets. Months ago, Cabinet Company (Cabinet) met with Hardware's General Manager (GM) and proposed a contract for Cabinet to buy "all of the copper knobs that Hardware produces." Based on Hardware's historical production levels, Cabinet had markets to sell cabinets using all of the copper knobs produced by Hardware. Hardware and Cabinet properly executed a written agreement (Agreement) for Cabinet to buy all of the copper knobs produced by Hardware.

Six months after Hardware and Cabinet signed Agreement, Hardware's production capabilities for copper knobs increased by 200 per cent due to the acquisition of a competitor's manufacturing plant. Cabinet did not know that Hardware planned to expand its capacity when it signed Agreement with Hardware. Cabinet has refused to purchase the additional copper knobs that Hardware is now producing.

In conjunction with its expansion, Hardware determined that it needed additional computer equipment to use with its existing computer equipment. Hardware's GM met with the sales manager for Tech Providers (Tech), who recommended an equipment package called Network 2019 as being compatible with Hardware's existing computer network. Hardware signed a contract to purchase Network 2019 and paid Tech in full. Tech agreed in writing to install Network 2019 in four weeks. The purchase agreement effectively disclaimed all implied warranties under the Texas UCC. When Network 2019 was delivered to Hardware, but before it was installed, Hardware wanted to confirm that Network 2019 would work with Hardware's existing computer network. Hardware's GM called Tech and was assured by Tech's sales manager that Network 2019 "would most assuredly work with your existing computer network. You have nothing to worry about." Tech installed Network 2019 and Hardware immediately found that Network 2019 did not work with its existing equipment. Hardware never revoked acceptance of Network 2019.

**Answer the following under the Texas UCC. Explain fully.**

- A. Is Agreement between Hardware and Cabinet enforceable without a specific quantity term?**
- B. Is Cabinet required to take all of Hardware's copper knobs for kitchen cabinets after Hardware increased its production by 200 per cent? Discuss the respective arguments each party should make.**
- C. What claim(s) should Hardware make against Tech due to Network 2019's incompatibility with Hardware's existing computer equipment?**

### **Texas Essay Question 5**

Jack died in 2019 with a valid attested and self-proven will. Jack was survived by his wife Karen and their two adult children, Lee and Matt.

The will named Karen as Independent Executor, to serve without compensation or requirement to post a bond. The will named Lee and Matt as the beneficiaries of Jack's entire estate.

When Jack died, Jack and Karen owned the following assets:

- A house in Travis County, Texas valued at \$750,000, which Jack inherited from his parents, and in which Jack and Karen lived when he died;
- Home furnishings valued at \$50,000;
- A \$300,000 life insurance policy on Jack's life, naming Karen as the beneficiary; and
- Jack's retirement plan, valued at \$1 million, naming Karen as the beneficiary.

- A. **What steps does Karen need to take to probate Jack's will and be appointed as Independent Executor? Explain fully.**
- B. **What are Karen's obligations after the probate court signs an Order Admitting Will to Probate and Appointing Independent Executor? Discuss the requirements generally applicable to independent executors, as well as Karen's responsibility with regard to the specific assets identified above.**

### **Texas Essay Question 6**

Mandy and Doug have a child named Charlotte. Mandy and Doug were never married. A Hays County, Texas "Order in Suit Affecting Parent-Child Relationship" named them joint managing conservators. The order awarded Mandy the right to establish the residence of Charlotte and make all medical and educational decisions. The order also required Doug to pay child support and awarded him access based on a Standard Possession Order.

Mandy married Nate when Charlotte was four years old, and Nate began raising Charlotte as his own. Doug rarely exercised his possession periods but faithfully paid his child support.

Charlotte is now eight years old and lives with Mandy and Nate in Gillespie County, Texas. Doug remains in Hays County and still rarely exercises possession but continues to pay child support. Mandy and Nate have two children together, and Nate desires to adopt Charlotte. Doug agrees for Nate to adopt Charlotte.

Mandy and Nate hire you to represent them in Nate's adoption of Charlotte.

**Advise Mandy and Nate as to the steps necessary for Nate to adopt Charlotte, including jurisdictional considerations, pleadings, reports, and hearings. Explain fully.**