



October 2020 Essay Questions 7-12

Texas Essay Question 7

Zachary, a Texas resident who was born and raised in Louisiana, is the designated “managing partner” of Tejas Acadia Group (TAG), a for-profit business that has its only office in Texas and conducts all of its business in Texas. Besides Zachary, there are five other partners, three of whom are Texas residents and two of whom are residents of Louisiana. Because of the confidential nature of TAG’s business, the partners agreed to not: (i) disclose TAG’s existence to the general public; or (ii) file any information containing TAG’s name, address, or business purpose with any governmental agency. TAG’s written partnership agreement, the sole copy of which is locked in a safe in TAG’s office, contains the following provisions:

- a. Any partner who wishes to access TAG’s books and records may do so, but only: (i) during normal business hours; (ii) under Zachary’s supervision; and (iii) after reimbursing TAG for the reasonable cost of making the books and records available;
- b. No partner will be liable to TAG’s creditors beyond the amount of his or her investment in TAG;
- c. No partner can be held liable to TAG for breach of the duty of care or of the duty of good faith unless the partner has engaged in willful or intentional misconduct;
- d. No partner may sell, transfer, or assign his or her interest in TAG to any person who is not already a partner in TAG; and
- e. TAG’s affairs are to be governed by Louisiana law.

A. Is TAG a general partnership, limited partnership, or limited liability partnership? Explain fully as to each.

B. Which of the above-listed provisions (a)-(e) of TAG’s partnership agreement are valid and which are not? Explain fully.

Texas Essay Question 8

Old World Life Insurance Company (Old World) issued a Mortgage Accidental Death Insurance Policy (Policy) to Pablo and his wife Phyllis, promising to pay their home mortgage in the event either died an accidental death. Four years after the Policy had been in effect, Phyllis became ill, was hospitalized, and went into a coma. Six days after coming out of the coma and being transferred to a hospital room, she fell, hit her head, and died.

Pablo submitted a claim to Old World, which unsuccessfully requested medical records several times from the hospital, through no fault of Old World or Pablo (who had provided a medical record authorization). Old World kept Pablo informed, though notices were sent occasionally to an old address. Months after the insurance claim was submitted, Old World denied the claim due to lack of proof that the death was accidental.

Because Phyllis was the primary breadwinner, Pablo could not make his mortgage payments and lost his house. Pablo also became distraught and sought the services of a psychologist for counseling. Pablo consulted with an attorney who filed suit against Old World. Discovery confirms that Old World had obtained some information about the circumstances surrounding Phyllis's death, including a statement from a hospital employee supporting a conclusion that the death was accidental.

- A. Analyze and explain fully the claims, if any, that Pablo may assert against Old World under Texas consumer statutes.**
- B. What remedies and damages, if any, may Pablo seek under Texas consumer statutes? Explain fully.**

Texas Essay Question 9

Sam and Jane set a wedding date. On May 1, 2017, Sam's mother Helen gave the couple a check (Check) payable to both Sam and Jane for \$1,000 to be used for wedding expenses. Check was drawn on Helen's account at ABC Bank. Jane purchased a wedding dress from High-End Designers (High-End). To pay for the dress, Jane indorsed Check by signing her name and gave it to High-End. High-End deposited Check in its account at Commerce Bank, which credited High-End's account for \$1,000 and forwarded Check to ABC Bank for collection. ABC Bank refused to honor Check, returning Check to Commerce Bank by 10 a.m. the morning after Check was presented. Commerce Bank then debited High-End's account for \$1,000 and returned Check to High-End.

Sam's brother Joe agreed to loan Sam money to pay for a wedding reception. Joe prepared and delivered a promissory note (Note) to Sam. Note was dated July 1, 2017, in the amount of \$15,000. Sam signed Note, which was payable to Joe two years from its date. Note gave Sam an option to extend the due date by up to 24 months. In Note, Sam promised to pay Joe from his checking account at XYZ Bank and stated that interest on Note would be the "Prime Rate of XYZ Bank as published in National Interest Reporter on July 1, 2017." National Interest Reporter ceased doing business in March 2017. Note did not state where it was to be paid.

Explain fully the following under the Texas Uniform Commercial Code:

- A. **Was ABC Bank justified in dishonoring Check?**
- B. **Was Commerce Bank justified in debiting High-End's account for \$1,000?**
- C. **Was Note a negotiable instrument?**
- D. **What interest rate, if any, applied to Note and from what date would interest be calculated?**

Texas Essay Question 10

Husband and Wife were married in 2015. In September 2019, Husband filed for divorce in Lubbock County, Texas, alleging separate property, a claim for reimbursement on behalf of his separate property estate for inheritance funds used to pay the mortgage on the marital residence, and a disproportionate division of the community estate because of Wife's earning capacity. Wife timely filed a general denial answer and counterpetition for divorce, claiming separate property and alleging fault in the breakup of the marriage.

Wife served in the United States Army for 21 years. She was honorably discharged two months prior to the marriage. Also prior to the marriage, Wife created a limited liability company for her houseplant business, "Grow Up." During the marriage, the business was successful. Wife has been paid an appropriate salary by Grow Up, but Grow Up's bank account contains \$25,000 in undisbursed earnings.

The parties and their respective attorneys participated in mediation and signed a valid and enforceable mediated settlement agreement for some of the issues in dispute:

- a. The marital residence would be sold and the net proceeds divided equally between the parties.
- b. Each party would be awarded the bank accounts in his/her respective names. No accounts were held in both names at the time of the mediation.
- c. Each party would be awarded the vehicle in his/her possession.

The mediated settlement agreement specified the parties were not able to reach an agreement on characterization and division of Wife's Army retirement benefits and the undisbursed earnings in Grow Up's bank account.

At the time of the final trial, the marital residence had sold, but the net proceeds remained in a trust account because the parties could not agree how to distribute the funds. Husband testified he forgot about his reimbursement claim during mediation.

With regard to each of the following rulings, identify whether the trial court acted in accordance with Texas law. Explain fully.

- A. **The trial court held that the parties incorrectly divided the net proceeds from the sale of the residence in their mediated settlement agreement because they failed to account for Husband's reimbursement claim.**
- B. **The court awarded Husband an amount equal to the mortgage payments (including principal reduction, interest, and escrowed taxes and insurance) paid during the marriage from Husband's separate property inheritance funds. The court ordered any balance remaining in the trust account after payment of the reimbursement claim be divided equally according to the mediated settlement agreement.**
- C. **The trial court awarded Husband one-half of Wife's military retirement.**

- D. **The trial court determined the funds in the Grow Up bank account are Wife's separate property.**

Texas Essay Question 11

Sharon, a single person, owned Whiteacre, a ranch located in Kleberg County, Texas, in fee simple. In April 2018, Sharon conveyed Whiteacre to her son, Tres, by a properly signed and acknowledged special warranty deed (Deed). The Deed recited that:

Sharon gives and grants Whiteacre to Tres, for as long as Tres maintains the family chapel on Whiteacre. If Tres ever destroys the family chapel, Whiteacre shall automatically revert to Sharon, without any further act by Sharon.

The Deed was properly recorded in the Kleberg County Real Property Records in April 2018.

In August 2019, to expand the ranch operations, Tres purchased Greenacre, a tract adjacent to Whiteacre, and demolished the family chapel. Although Tres paid for Greenacre with cash that was community property belonging to him and his wife, Blanca, the general warranty deed that conveyed Greenacre to him named only Tres as the grantee. This deed was properly recorded in the Kleberg County Real Property Records.

In December 2019, Tres and Blanca divorced in Wilson County, Texas. In dividing the marital property, the court awarded Greenacre entirely to Blanca. Nothing was recorded in the Kleberg County Real Property Records concerning the divorce or Blanca's ownership of Greenacre.

In January 2020, Sharon learned of the destruction of the family chapel, took possession of Whiteacre, and leased it to Jerry. At the same time, Jerry, unaware of the divorce proceedings in Wilson County, offered to buy Greenacre from Tres. Tres agreed to sell Greenacre to Jerry but told Jerry that he would only give him a quitclaim deed. Jerry paid a discounted price for Greenacre and received the quitclaim deed, which recited that Tres "releases, remises and quitclaims to Jerry all of Tres's right, title and interest (if any) in and to Greenacre."

Blanca, who wanted to conduct ranching operations on Greenacre, demanded that Jerry vacate Greenacre. Jerry refused, asserting that he owns Greenacre.

- A. **Was Sharon entitled to lease Whiteacre to Jerry? Explain fully.**
- B. **What are Blanca and Jerry's arguments can Blanca and Jerry make in support of their respective claims of superior title to Greenacre, and who will likely prevail? Explain fully.**

Texas Essay Question 12

Jill, a lifelong Texas resident, was a widow and had two daughters, Mary and Sara. In 2014, Jill executed a will leaving her entire estate in equal shares to her two daughters. In 2015, Jill suffered a severe stroke that left her physically and mentally impaired. Mary, who was unemployed, moved in with Jill to provide care. In exchange, Jill supported Mary financially. Sara lived out-of-state, and visited twice a year. Other than the visits from Sara, Jill had no other interaction with anyone besides Mary.

In 2019, using a form she found on an internet website, Mary prepared a new will for Jill (New Will) that left all of Jill's estate to Mary, except for \$5,000 left to Sara. New Will included a no-contest clause that stated, "If any beneficiary contests this will or any of its provisions, she shall forfeit all gifts hereunder and shall take no part of my estate."

New Will, which had a self-proving affidavit, was executed in Jill's home, before two witnesses and a notary who had never before met Jill. Mary was present when Jill signed New Will and the self-proving affidavit. Mary informed the witnesses and notary beforehand that Jill was weak and wanted the will signing to go as quickly as possible. Jill did not speak during the will signing. The witnesses quickly signed New Will and the self-proving affidavit without reading them or hearing them read out loud.

After the signing, one witness lagged behind to wish Jill well. At that time, Jill told the witness that she was secretly a "princess," and she was leaving her "royal kingdom" to her "only heir to the throne."

At Jill's funeral, the same witness told Sara about Jill's strange statements at the signing of New Will. Sara also found evidence that Mary had prepared New Will.

- A. **Based on the facts provided, what ground(s), if any, might Sara assert to challenge New Will, what would she have to prove for each ground, and what is the probable outcome on each ground? Explain fully.**
- B. **Would Sara's filing of a challenge result in a forfeiture of Jill's bequest to her? Explain fully.**