

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 2012. No children were born during the marriage. The couple separated in 2019, and Wife filed for divorce in Wood County in 2020. The following evidence was presented at trial.

The couple purchased a residence in 2013. The contract for sale, the deed, and the deed of trust named both as parties to the transaction, and community property funds were used for the down payment and the mortgage payments. The same year, Husband's aunt died and left Husband \$20,000 from her estate. In 2014, Husband and Wife used the \$20,000 to build a swimming pool in the backyard of the residence. Community funds were also used for the pool.

Wife testified the residence had a value of \$260,000. Husband testified the residence had a value of \$280,000 and that his separate property estate was entitled to a \$20,000 reimbursement claim. No expert was called to testify on the value of the property. Husband and Wife each testified based on their knowledge of comparable sales of other homes in the community.

During the marriage, Wife used her separate property money to buy a small cabin on Lake Fork and included Husband's name on the title. Wife testified she did not intend to gift any interest in the cabin to Husband. A family friend testified that, after Husband and Wife separated in 2019, Wife told her that the cabin was Wife's separate property and that, when the parties divorced, Husband had no right of ownership in the cabin. No other evidence was presented about characterization of the cabin.

The trial court made the following rulings:

- (1) The value of the residence was \$270,000;
- (2) Husband's claim for reimbursement for the swimming pool was denied;
and
- (3) Husband and Wife were each entitled to an undivided $\frac{1}{2}$ interest in the Lake Fork cabin as their separate property.

Did the trial court err:

- (A) In finding that the value of the residence was \$270,000?**
- (B) In denying Husband's claim for reimbursement for the addition of the swimming pool?**
- (C) In ruling that Husband and Wife were each entitled to an undivided $\frac{1}{2}$ interest in the Lake Fork cabin as their separate property?**

Explain fully as to each.

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

If laptop, answer in the screen marked Question 2.

Question 2

Pen Corp (Corp) is the legal name of a Texas corporation doing business in Texas under the assumed name “Miracle Erase Pens,” which is also the name of its leading product. Corp has manufacturing plants in Dallas and Houston, Texas.

On February 1, 2019, Corp borrowed \$2 million from First Bank to finance its operations. Corp and First Bank signed a security agreement giving First Bank a security interest in Corp’s “inventory, equipment, and accounts, now owned or hereafter acquired.”

On February 5, 2019, First Bank filed a financing statement with the Texas Secretary of State (Texas SoS) describing the collateral as “inventory, equipment, and accounts.” The financing statement listed First Bank’s correct legal name and address as the secured party, but the debtor’s name was listed as “Miracle Erase Pens.” The debtor’s legal name was not on the financing statement. The debtor’s correct address was on the financing statement.

On November 1, 2019, Corp approached Second Bank to borrow \$500,000 to purchase a special plastic to be used to produce a new line of pens. Second Bank searched the Texas SoS records for financing statements listing “Pen Corp” as the debtor and found none. Second Bank loaned the money to Corp.

On November 8, 2019, Corp and Second Bank signed a security agreement giving Second Bank a security interest in the special plastic Corp planned to purchase for its new line of pens.

On November 12, 2019, the special plastic was delivered to Corp’s manufacturing plants in Dallas and Houston.

On November 15, 2019, Second Bank filed a proper financing statement with the Texas SoS with regard to the \$500,000 loan.

Three months later Corp defaulted on its loan obligations to both First Bank and Second Bank.

Discuss fully the interests and priorities of First Bank and Second Bank in Corp’s assets, including:

- (A) Whether any security interests attached;**
- (B) If so, whether any security interests were perfected; and**
- (C) The priority of any security interests.**

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

Question 3

In February 2020, Alex died at his home in Dallas, Texas. Alex was survived by his sister Beth and his twin 10-year-old children, Charles and David.

After his death, the following handwritten note was found in Alex's home:

This is my last will. I am of sound mind and over the age of 18.

I leave my entire estate to my sister Beth.

/s/ Alex

January 1, 2020.

Beth recognizes Alex's handwriting and signature on the note.

- (A) Is the note found in Alex's home a valid holographic will? Explain fully.**
- (B) If the note is a valid holographic will, what evidence must Beth offer to probate the note as Alex's will? Explain fully.**
- (C) What rights, if any, do Charles and David have in Alex's estate? Explain fully.**

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

If laptop, answer in the screen marked Question 4.

Question 4

Pam collects rare art, including art passed down from family members by a will. After searching the internet for potential security firms to protect her art collection, Pam finds a business called DPS. DPS stands for Don's Professional Services. DPS's web-based advertisements state that "DPS is the best in the business." Pam later speaks directly with Don, who tells Pam he is the owner of DPS. Don convinces her to buy security services from DPS. Towards the end of the conversation, Don says that for a small additional amount, Pam can also purchase insurance for her art from Don through a company called America's Total Coverage Insurance (ATCI). Don tells Pam that the ATCI insurance provides "total coverage" in the unlikely event of a loss.

After speaking with Don and reviewing DPS's web-based advertisements, Pam signs online contracts with DPS for security and with ATCI for property and casualty insurance. The fine print in each contract contains a provision stating "Waiver. Customer hereby waives all legal rights." DPS's contract also states, "All work to be performed by licensed and trained personnel."

Within days, a DPS employee wearing a uniform resembling a law enforcement officer goes to Pam's condominium and installs the security system, including cameras and alarms. Less than a month later, Pam's condominium is broken into and her entire art collection is stolen. The security system failed to record any video footage and also failed to call law enforcement. ATCI denies the insurance claim, citing a clause in the ATCI contract excluding coverage within 30 days of the policy coming into force at any condominium complex or other multi-occupant dwelling property.

Apart from the economic loss of the art collection, Pam becomes distraught and seeks counseling services from a psychologist. Pam also consults with an attorney, who then files suit against Don, DPS, and ATCI. Discovery confirms that a number of complaints and lawsuits have been lodged against DPS, including complaints for employing inexperienced, unlicensed employees, including the employee who installed the security system at Pam's condominium.

(A) Analyze the claims, if any, that Pam may assert against Don, DPS, and/or ATCI under Texas consumer laws. Explain fully.

(B) What remedies and damages, if any, may Pam seek under Texas consumer laws? Explain fully.

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

If laptop, answer in the screen marked Question 5.

Question 5

In 2015, Ellis conveyed Blackacre, a 100-acre tract of land in Nueces County, Texas, to Duncan. In the warranty deed to Duncan, Ellis reserved “one-half of the royalty under any mineral lease now or hereafter covering Blackacre.” The warranty deed to Duncan was properly recorded in the Nueces County Real Property Records.

Duncan later executed a mineral warranty deed to Lindy that stated that Duncan conveyed “all oil, gas and other minerals on, under and that may be produced from Blackacre, except that Duncan reserves one-fourth of the royalty under any mineral lease now or hereafter covering Blackacre as a reservation for Duncan and Duncan’s heirs, successors and assigns forever.” The mineral warranty deed did not mention Ellis’s prior reservation. Lindy properly recorded this deed in the Nueces County Real Property Records. Duncan retained all surface rights to Blackacre.

Lindy entered into a contract that allowed Sand Co. to excavate and remove sand from Blackacre. Duncan objected when Sand Co. started to dig a sand pit on Blackacre.

In a lease entered into between Oil Co. and Lindy, Oil Co. agreed to pay “a one-fifth royalty from production on Blackacre.” Oil Co. drilled a producing oil well on Blackacre and made the first royalty payment by dividing the one-fifth royalty as follows: (i) one-half of the one-fifth to Ellis; (ii) one-fourth of the one-fifth to Duncan; and (iii) one-fourth of the one-fifth to Lindy.

Initially, Ellis, Duncan, and Lindy signed a division order that accepted Oil Co.’s division of the first royalty payment. After the first payment, Lindy sent a letter to Oil Co. revoking her consent to the division order, demanding that Oil Co. recalculate the first payment and remit to her the amount Oil Co. had paid Duncan, and directing Oil Co. to make all future royalty payments “in accordance with the legal rights of the parties under the recorded conveyances.” Duncan told Lindy that, if his share were reduced, he would sue to invalidate the lease to Oil Co. on the grounds that he had never signed it and that Lindy was not empowered to be the sole lessor signatory.

(A) How should Oil Co. divide future royalty payments? Explain fully.

(B) What claims, if any, do Lindy and Duncan have against one another? Explain fully.

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

Question 6

Oil, Inc. (Oil), is a publicly traded, for-profit Texas corporation operating an oil-field services business. Oil is governed by a board of directors and has 1,000 outside shareholders. Bobby was the chairman and chief executive officer of Oil. Bobby was not a particularly effective businessman and did relatively little work for the corporation. His value to Oil was in his family connections throughout the oil and gas industry which had brought significant profit to Oil.

In March 2019, at a regular meeting of Oil's board, with Bobby present, the Oil board voted unanimously to personally loan Bobby \$250,000 for the purchase of a yacht. The loan was made from Oil's corporate funds and Bobby purchased the yacht.

In July 2019, Bobby urged Oil's board to purchase the assets and assume the liabilities of Gas Corp. (Gas), a Texas corporation, a natural gas company owned solely by Bobby's close friend, Steve. After a brief discussion of the pros and cons of such an asset purchase at the Oil board meeting, the Oil board voted to purchase Gas and the purchase was consummated. Oil owned no interest in Gas prior to the transaction. Oil conducted no due diligence on Gas because Steve had assured Bobby that all of Gas's liabilities were shown on its corporate books.

In October 2019, Oil, having assumed Gas's liabilities, was sued by a number of farmers claiming contaminated wastewater runoff from Gas's operations damaged their crops and rendered their farmland unusable. An investigation by Oil before closing the purchase of Gas's assets and assuming its liabilities would have revealed these undisclosed claims.

In February 2020, Oil's board unanimously approved settlement of the lawsuit for \$1,500,000, an amount that caused Oil's debts to exceed its assets.

In May 2020, Oil's board voted to give Bobby, as a bonus, a \$50,000 antique watch.

In August 2020, Bobby set sail on his yacht but died when the yacht sank in the Gulf of Mexico. Bobby's only assets were the yacht and the watch, both of which were lost at sea.

Oil's board has been lawfully replaced through shareholder action. The new Oil board seeks advice on the following questions:

- (A) Was shareholder approval, by either Gas's or Oil's shareholders, required for the purchase of Gas's assets and the assumption of its liabilities? Explain fully.**
- (B) Can the members of Oil's previous board be held liable for: (i) the \$1,500,000 settlement; (ii) the \$250,000 loan; or (iii) the watch bonus? Explain fully.**

**This concludes the Texas Essay Questions.
Write the pledge on the back of this question book.**

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