

Thursday Afternoon
February 26, 2009
Essay Questions 7 -12



TEXAS BAR EXAMINATION

COPYRIGHT © 2009 TEXAS BOARD OF LAW EXAMINERS

THIS MATERIAL, OR ANY PORTION HEREOF, MAY NOT BE REPRINTED WITHOUT THE ADVANCE WRITTEN
PERMISSION OF THE TEXAS BOARD OF LAW EXAMINERS

**If WRITING, answer Question 7 in the RED answer book.
If using LAPTOP, be certain you answer in the correct screen.**

QUESTION 7

On January 2, Widget Corp. (“Widget”) was duly formed and incorporated in accordance with the Texas Business Organizations Code. Beth and Mike were its only officers, directors, and shareholders. On January 2, each was issued a certificate representing 50% of Widget’s shares.

Just six months after Widget was incorporated, Beth and Mike decided that they wanted to govern Widget pursuant to a shareholders’ agreement. Widget’s attorney drafted a shareholders’ agreement for Beth’s signature, and Beth signed it in her capacity as Widget’s President. Among other things, the agreement (i) eliminated Widget’s board of directors, (ii) provided that Beth would be Widget’s President, (iii) provided that Beth would manage the corporation, and (iv) provided that the shareholders’ agreement would remain in place for 25 years.

On September 1, Mike sold his shares of Widget to George. Mike handed George the stock certificate Mike had received on January 2. The next day, George was surprised to learn from Beth that Widget was being managed pursuant to a shareholders’ agreement and that he would have no role in managing the corporation because Beth was the sole manager of Widget.

On November 1, George wrote Beth to request that his accountant be allowed to inspect the corporation’s books and records at a time convenient for Beth and the accountant. Beth informed George that she would not comply with his request.

On December 1, George sued Beth, Mike, and Widget seeking: (1) a declaratory judgment that the shareholders’ agreement was not properly adopted, (2) a declaratory judgment that the shareholders’ agreement contains unlawful terms, (3) an order compelling Beth to allow George’s accountant to inspect Widget’s books and records, and (4) rescission of his purchase of shares in Widget.

1. Was the shareholders’ agreement properly adopted? Explain fully.
2. Does the shareholders’ agreement contain unlawful terms? Explain fully.
3. Is George entitled to rescission? Explain fully.
4. Is George’s accountant entitled to inspect Widget’s books and records? Explain fully.

Answer the next question in the LIGHT GREEN answer book.

If **WRITING**, answer Question 8 in the **LIGHT GREEN** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 8

In March, Jeannie and Mollie, who both are real estate lawyers, and Herb, a licensed real estate broker, agreed to form a professional limited liability company named “Jeannie, Mollie & Herb Co.” The purpose of the company was for Jeannie and Mollie to provide legal services and for Herb to provide real estate brokerage services. Before the certificate of formation was filed, Herb informed Jeannie and Mollie that he no longer wished to go into business with them.

In May, Jeannie and Mollie filed the certificate of formation with the Texas Secretary of State to form “Jeannie & Mollie, PLLC” (“PLLC”) for the purpose of providing legal services. Jeannie and Mollie agreed that Mollie would be PLLC’s only manager.

In October, in the course of representing Zac, Mollie negligently failed to notice a lien on a piece of real property purchased by Zac. Zac was forced to pay the lien to obtain clear title to the property. Zac sued Jeannie, Mollie, and PLLC for damages arising from Mollie’s negligence.

1. Under the Texas Business Organizations Code, could Jeannie, Mollie, and Herb lawfully have formed a professional limited liability company named “Jeannie, Mollie and Herb Co.” as they initially planned to do? Explain fully.
2. What liability, if any, do PLLC, Jeannie, and Mollie have to Zac arising from Mollie’s negligence? Explain fully.
3. If Jeannie and Mollie had formed a limited liability partnership instead of PLLC, what liability, if any, would the partnership, Jeannie, and Mollie have to Zac arising from Mollie’s negligence? Explain fully.

Answer the next question in the YELLOW answer book.

If **WRITING**, answer Question 9 in the **YELLOW** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 9

By way of a valid, probated will, Tom Davis created the Davis Family Trust with Jane as trustee and Mark as beneficiary for his life and Carol and her heirs, including her son Ray, as residuary beneficiaries. The trust corpus consisted of cash in a bank and stocks and bonds held by a local brokerage firm. Jane declined to serve as trustee. Without being formally appointed trustee, Mark opened a bank account for the trust at First Bank and assumed authority for the trust securities held by the brokerage house. Mark filed tax returns for the trust, signing as trustee.

Mark sold Bland Company stock held by the trust because it was producing an unusually low rate of return. Mark used the proceeds of this sale to buy Tejas, Inc. (“Tejas”) stock. Tejas had a five-year record of unusually high rates of return because of its success in developing foreign production facilities. Two years after the purchase of the Tejas stock, a revolution occurred in one of the primary foreign locations for Tejas, and the new government nationalized the Tejas facilities. Tejas’ stock collapsed, and the trust lost a significant portion of its corpus.

Mark’s income from the trust was reduced by Tejas’ collapse. He borrowed \$100,000 from State Bank, pledging other trust stock as collateral for the loan. Mark borrowed \$25,000 from the trust and gave the trust his promissory note for that amount plus a commercially reasonable rate of interest.

1. Do Carol or her son Ray have standing to assert a claim against Mark for themselves or the trust? Explain fully.
2. Mark defended his actions by claiming that he cannot be liable to Carol or Ray because he was never appointed “trustee” of the trust by the will or a court. Is he likely to succeed with this defense? Explain fully.
3. What causes of action and rights of recovery, if any, do Carol and Ray have against Mark with respect to the following transactions:
 - a. The State Bank loan and the loan from the trust to Mark?
 - b. The sale of the Bland Company stock and the purchase of the Tejas stock?Explain fully as to each.

Answer the next question in the BLUE answer book.

If **WRITING**, answer Question 10 in the **BLUE** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 10

Bill owned a rent house that was completely destroyed by a fire. The house was insured by Insko Insurance Company (“Insko”) under an insurance policy with \$100,000 policy limits for fire loss. The house and the land recently had been appraised at a value of \$120,000. Bill reported the loss to Stace, the Insko agent who had sold him the policy, and Stace made a timely report of the loss to the home office of Insko as required by the policy.

The Fire Marshall, an independent investigator hired by Insko, and an in-house adjuster employed by Insko all inspected the site of the fire and concluded that the cause of the fire had been a faulty electrical outlet. They all filed reports with Insko to that effect.

Anxious to rebuild the house so he could rent it again, Bill asked Stace when he could expect to receive a settlement from Insko. Without first contacting Insko to ascertain the status of the matter, Stace said, “Everything looks fine. You should be getting your check soon – certainly within 90 days.”

Relying on Stace’s representation, Bill obtained a 90-day construction loan in the amount of \$100,000 from First Bank, secured by a first deed of trust on the property. He also hired Alamo Construction Co. to rebuild the house at a price of \$100,000.

Several times during the next two weeks, Bill placed phone calls to Stace and wrote letters to Insko to inquire into the status of his claim. Neither Stace nor Insko responded. Finally, about two months later, Stace phoned Bill and told him, “Your claim is out of my hands. Insko thinks it’s a suspicious fire.” After leaving several unreturned phone messages, Bill finally reached Insko’s in-house adjuster, who told him that Insko was denying the claim because Insko believed the fire was caused by arson.

In the meantime, construction on the house was proceeding, and, after 90 days, Bill exhausted the \$100,000 he had borrowed from First Bank. When the loan became due, First Bank demanded payment, and, when Bill could not pay, First Bank foreclosed on its deed of trust. Bill had to take a lot of unpaid time off work, he became emotionally upset, and incurred medical bills resulting from his stress.

Nine months later, Insko told Bill it had reconsidered the claim, saying that, although it did not believe it was liable, it offered to pay \$45,000 in full satisfaction of Bill’s claim. Bill refused the offer and hired an attorney to sue Insko. Under the threat of suit, Insko tendered the full policy limits of \$100,000.

Assume that Bill is a “consumer” under all applicable Texas consumer laws.

1. Under Texas consumer laws, what causes of action can Bill assert against Stace, and what types of damages can he recover from Stace? Explain fully.
2. Under Texas consumer laws, what causes of action can Bill assert against Insko, and what types of damages can he recover from Insko? Explain fully.

Answer the next question in the ORANGE answer book.

If **WRITING**, answer Question 11 in the **ORANGE** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 11

Adam signed a check in the amount of \$500, payable to Bill and Nan, drawn on his account at CanDo Bank. The next day, Bill purchased an antique table from Dan and gave Dan the \$500 check as payment for the table. Bill alone indorsed the check.

Dan indorsed and deposited the check into his account at Middle Bank. Middle Bank credited Dan's account and forwarded the check to CanDo Bank for collection. CanDo Bank refused to honor the check and returned it to Middle Bank. Middle Bank then debited Dan's account for \$500 and returned the check to Dan.

1. Did CanDo Bank properly refuse to honor the check? Explain fully.
2. Did Middle Bank properly debit Dan's account for \$500? Explain fully.
3. What are Dan's rights, if any, against Nan under the Texas UCC? Explain fully.

Answer the next question in the PURPLE answer book.

If **WRITING**, answer Question 12 in the **PURPLE** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 12

Chic was a master cabinetmaker who operated his business as a sole proprietor. On February 1, Chic borrowed \$10,000 from Ivan for working capital. Chic signed a promissory note payable to Ivan in one year at six percent simple interest. Chic also signed a security agreement giving Ivan a security interest in collateral described as follows: "All of Chic's assets." On the same day, Ivan filed a financing statement with the Texas Secretary of State listing Chic as the debtor, Ivan as the secured party, and "All of Chic's assets" as the collateral.

On March 1, Chic purchased a band saw on credit for \$750 from Terry's Tools ("Terry"). Chic agreed to give Terry a security interest in the band saw, but Terry did not have the security agreement prepared at the time Chic purchased the band saw. Terry told Chic that he would email the security agreement to Chic, which Terry did the next day.

Chic received the email and immediately left a voicemail message for Terry that he had received the emailed security agreement and would print it out, sign it and return it to Terry. Terry then filed a financing statement with the Texas Secretary of State on March 2, listing Chic as the debtor, Terry as the secured party, and the band saw as the collateral. Chic never printed out or signed the emailed security agreement.

On June 30, Chic signed a security agreement giving his brother-in-law, Rufus, a security interest to secure a loan of \$900 that Chic had borrowed from Rufus one year earlier. The collateral was described as follows: "All of Chic's inventory, equipment, and all other assets." Rufus promptly filed a financing statement with the Texas Secretary of State listing Chic as the debtor, Rufus as the secured party, and "All of Chic's assets" as the collateral.

On August 1, Chic left for parts unknown and abandoned his business leaving only three unfinished cabinets, the band saw and 500 board feet of solid-oak lumber.

Which creditor has the superior interest in the following property:

1. The band saw? Explain fully.
2. The three unfinished cabinets and the 500 board feet of solid-oak lumber? Explain fully.

This concludes the Texas Essay portion of the exam.

**WRITE THE PLEDGE ON THE BACK OF
YOUR PURPLE ANSWER BOOK OR ON
THE PLEDGE SHEET PROVIDED.**