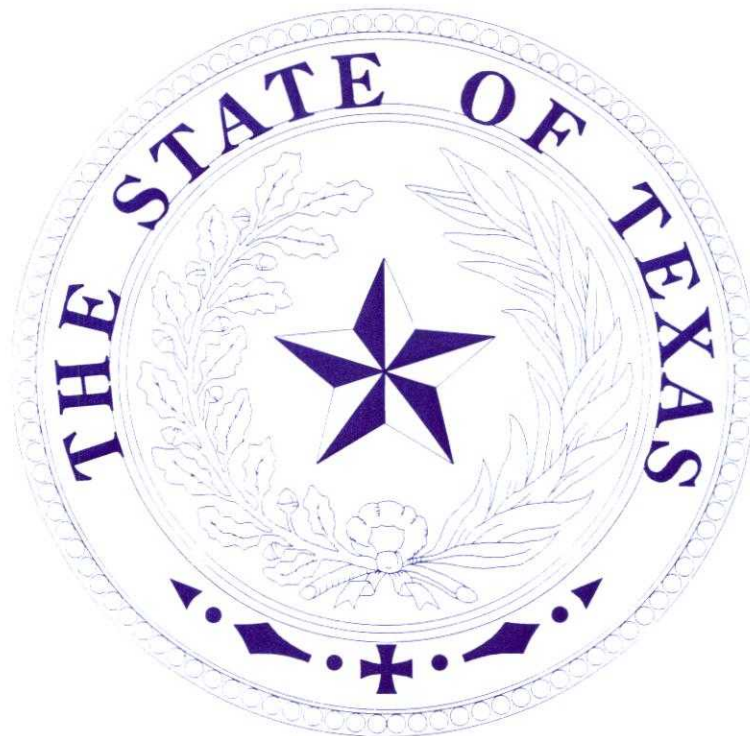


Thursday Morning
July 30, 2009
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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If **WRITING**, answer Question 1 in the **GOLD** answer book.
If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 1

Shirt Co. (“Shirt”), a Texas general partnership, was formed by Ethel and Fred. Shirt was formed for the purpose of printing T-shirts bearing funny or satirical messages and selling them via the internet. The day after Shirt was formed, the following property was purchased:

- Ethel, using her own money, purchased a vehicle. Title to the vehicle was issued to “Ethel, Partner, Shirt Co.”
- Fred, using his own money, purchased a T-shirt printing machine. The bill of sale shows “Fred” as the purchaser.
- Fred, using a check drawn on Shirt’s bank account, purchased 1,000 T-shirts from Vendor. The bill of sale shows “Fred” as the purchaser.

The week after Shirt was formed, without Ethel’s knowledge, Fred purchased 500 more T-shirts from Vendor with a check drawn on his personal account. Fred used the printing machine to print these 500 T-shirts with cartoons. Fred intends to sell these 500 T-shirts to customers via the internet and to keep the sales proceeds for himself. Fred did not have sufficient money in his checking account to cover the personal check written to Vendor and the check has been dishonored by Fred’s bank.

1. **Who owns the vehicle, the printing machine, and the initial 1,000 T-shirts? Explain fully.**
2. **Has Fred violated any duty to the partnership? Explain fully.**
3. **Is Shirt liable to Vendor for the 500 T-shirts purchased by Fred using his personal check? Explain fully.**

Answer the next question in the GRAY answer book.

If **WRITING**, answer Question 2 in the **GRAY** answer book.
If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 2

Widget, Inc. (“Widget”) is a Texas corporation incorporated in 2006. Ten thousand (10,000) shares of Widget stock were initially authorized.

Elvis owns 500 shares of Widget stock. A number of other shareholders together own a total of 4,500 shares of Widget stock. The remaining 5,000 shares were never issued. On January 2, 2009, Widget’s Board of Directors notified all of its shareholders of its intent to: (1) give 1,000 shares of the unissued stock to Widget’s president, Veronica, as compensation, (2) give 1,000 shares of the unissued stock to Supplier in exchange for equipment, and (3) sell 3,000 shares of unissued stock to the general public. On January 4, 2009, Elvis informed Widget’s treasurer over the telephone that he did not intend to exercise a preemptive right as to the shares being issued. A week later, Elvis wrote Widget’s treasurer, stating, “I know I told you over the phone that I did not want to exercise my preemptive right. I’ve changed my mind and now want to exercise a preemptive right to purchase all of the shares of the unissued stock that I am entitled to purchase.”

On July 20, 2009, Elvis received a notice that Widget’s Board of Directors approved a plan to merge Widget into another corporation and is recommending that the shareholders approve the merger. Widgets’ shareholders received timely and proper notice under the Texas Business Organizations Code (“TBOC”) of the special shareholders’ meeting to be held for the purpose of voting on the proposed merger. Elvis is unhappy about the proposed merger, but he knows from talking with the other shareholders that it will be approved. Elvis wishes to relinquish his shares in Widget and to be paid for them.

1. **What must Elvis show to establish that he has a preemptive right to purchase any of Widget’s unissued shares? Explain fully.**
2. **If Elvis establishes a preemptive right, how many shares would he have the right to purchase? Explain fully.**
3. **Can Elvis require Widget to pay him for his shares, and, if so, what statutorily required steps must he take to perfect that right? Explain fully.**

Answer the next question in the BLUE answer book.

If **WRITING**, answer Question 3 in the **BLUE** answer book.
If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 3

On May 24, 2009, Homer borrowed \$20,000 from Eddie. In consideration, Eddie accepted a typed promissory note (“Note”), signed by Homer, promising to pay \$20,000 plus interest at the prime rate as published in a magazine called *Reliable Financial Quotes*. The typed date on the Note was May 26, 2009. The Note recited that it was payable to the order of Eddie in Dallas, Texas, one year from its date. The Note further provided that it was subject to Homer’s right, on or before the original due date of the Note, to extend the due date of the Note for an additional two years.

The Note also recited that payment was to be made from Homer’s savings account at Credit Union. When Homer signed the Note, he wrote “date: 5/30/09” next to his signature.

On June 15, 2009, Eddie, in consideration for \$15,000 paid to him by Stella, gave the Note to Stella and indorsed it as follows, “Pay only to Stella when she finishes painting my house. /s/ Eddie.”

Reliable Financial Quotes had ceased publishing six months before Homer had signed the Note.

Homer never exercised his option to extend the due date of the Note, and he has in excess of \$25,000 on deposit in his savings account at Credit Union.

1. **When Eddie took the Note from Homer, was it a negotiable instrument? Explain fully.**
2. **When Stella took the Note from Eddie, was it a negotiable instrument? Explain fully.**
3. **Is Homer obligated to pay any interest under the Note, and if so, on what basis is it to be calculated? Explain fully.**
4. **On what date is the Note presently due? Explain fully.**

Answer the next question in the PINK answer book.

If **WRITING**, answer Question 4 in the **PINK** answer book.
If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 4

Jillian was the president and sole shareholder of ABC Corp. (“ABC”), a Texas corporation. On August 1, 2008, ABC purchased all the assets of the business of Tiny Tim (“Tim”) dba “Crooked Needle.” The assets consisted of sewing machines, supplies and knitting inventory. As part of the sale, ABC also acquired the right to use the name “Crooked Needle,” which Jillian told Tim was a “catchy name” that she liked and would probably start using in a few months. In partial payment for the assets and name, Jillian, on behalf of ABC, signed a \$30,000 promissory note payable to Tim and a security agreement covering “all of the equipment, supplies and inventory of ABC Corp. now owned or hereafter acquired.”

Tim properly filed a financing statement on August 5, 2008, with the Texas Secretary of State listing his name and address as the secured party and ABC and its address as the debtor and describing the collateral as “all of the equipment, supplies and inventory of ABC Corp.”

On September 1, 2008, ABC changed its name to “The Crooked Needle Knitting Nook Co.” (“The Nook”).

On February 2, 2009, Jillian needed additional funds to run The Nook and borrowed \$15,000 from Fast Bank. Jillian, on behalf of The Nook, signed a \$15,000 promissory note payable to Fast Bank and signed a security agreement covering “all of the equipment, supplies and inventory of The Crooked Needle Knitting Nook Co. now owned or hereafter acquired.”

On March 5, 2009, Jillian, on behalf of The Nook, obtained a credit card and credit account with Video Shack. On behalf of The Nook, Jillian signed the front of a preprinted form entitled “Credit Agreement and Security Agreement” that contained language on the back of the form giving Video Shack a security interest in collateral described as “all merchandise charged to the account.” Above the signature line on the front of the form was the language “I have read the Credit Agreement and Security Agreement.” Also on March 5, 2009, The Nook used the credit card to obtain \$5,000 worth of merchandise from Video Shack. Video Shack properly filed a financing statement with the Texas Secretary of State. The merchandise is still in The Nook’s possession.

Later in March, The Nook purchased a set of solid oak display cabinets for cash from Henry’s Cabinet Shop.

The Nook has not paid any of the borrowed and charged amounts. They are now overdue.

- 1. In which of The Nook’s collateral, if any, does Tim have a superior security interest? Explain fully.**
- 2. In which of The Nook’s collateral, if any, does Video Shack have a superior security interest? Explain fully.**
- 3. In which of The Nook’s collateral, if any, does Fast Bank have a superior security interest? Explain fully.**

Answer the next question in the DARK GREEN answer book.

If **WRITING**, answer Question 5 in the **DARK GREEN** answer book. If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 5

Jim, a widower, executed a valid, attested, self-proved will in 2000. The will devised Jim's entire estate to his brother, Bob, and named Bob as independent executor. Jim was killed in December 2007 when his vehicle was struck by a truck operated by an employee of Maverick Freight Lines ("Maverick"). The driver of the truck was drunk at the time of the collision.

Bob filed Jim's will for probate. In March 2008, the Court signed an order admitting the will to probate and appointing Bob as independent executor of Jim's estate. Bob, as independent executor of Jim's estate, filed a wrongful death action against Maverick.

Susan, as next friend of her minor son, Fred, filed a will contest in July 2008, alleging that Jim was Fred's father. Fred was born in 2002. Jim had told Bob on several occasions that he had a son with Susan, but that Jim's name had been omitted from Fred's birth certificate to save Susan embarrassment because she was married to another man at the time of Fred's birth.

No paternity testing was ever done to establish that Jim was Fred's father. Jim never executed a statement of paternity or undertook any proceeding to adopt or legitimize Fred. However, Bob found a signed note that Jim had written to Susan promising to support Fred as his father and cancelled checks showing that Jim had been sending money to Susan for Fred's support for several years.

Susan contended that because Jim was unmarried at the time of his death, and had no other children, Fred should inherit all of Jim's estate. Susan, on Fred's behalf, also intervened in the wrongful death action filed against Maverick.

1. **To whom should Jim's estate be distributed? Explain fully.**
2. **Does Susan, on behalf of Fred, have standing to intervene in the wrongful death action against Maverick? Explain fully.**

Answer the next question in the TAN answer book.

If **WRITING**, answer Question 6 in the **TAN** answer book.
If using **LAPTOP**, be certain you answer in the **correct** screen.

QUESTION 6

Mary executed a will in 2006. Mary's will contained the following provision:

"I hereby leave all my estate to my dog, Noodles, because I despise my only sister, Karen, who harassed, humiliated, and embarrassed me both publicly and privately since we were both children. In the event Noodles predeceases me, I leave my entire estate to the SPCA."

Angela and Cheryl both witnessed Mary signing the will. Angela and Cheryl each signed the self-proving affidavit to Mary's will in Mary's presence, but neither of them signed the will itself. Angela died shortly thereafter. Cheryl and Noodles both died in 2007. Mary died in 2008.

Mary's will was filed for probate by her friend, Terri, as the named independent executor in Mary's will. Terri is the only person available who can testify that she recognizes Mary's signature on the will as being Mary's signature. No one is available who can testify as to Angela's signature on the self-proving affidavit. Cheryl's banker and her lawyer can each testify that Cheryl's signature on the self-proving affidavit is in Cheryl's handwriting.

Karen, Mary's sister, filed an objection to probating Mary's will contending that, since both of the witnesses to Mary's will were deceased, and because each of them had failed to sign Mary's will, Mary's will could not be admitted to probate. Karen contended that Mary died without a will and Mary's entire estate should pass to Karen, as her surviving sister. Mary's estate, valued at \$2,000,000 consisted of real property, cash and securities.

1. **Can Mary's will be admitted to probate? Explain fully.**
2. **How should Mary's estate be distributed? Explain fully.**

This concludes the morning portion of the Texas Essay exam.