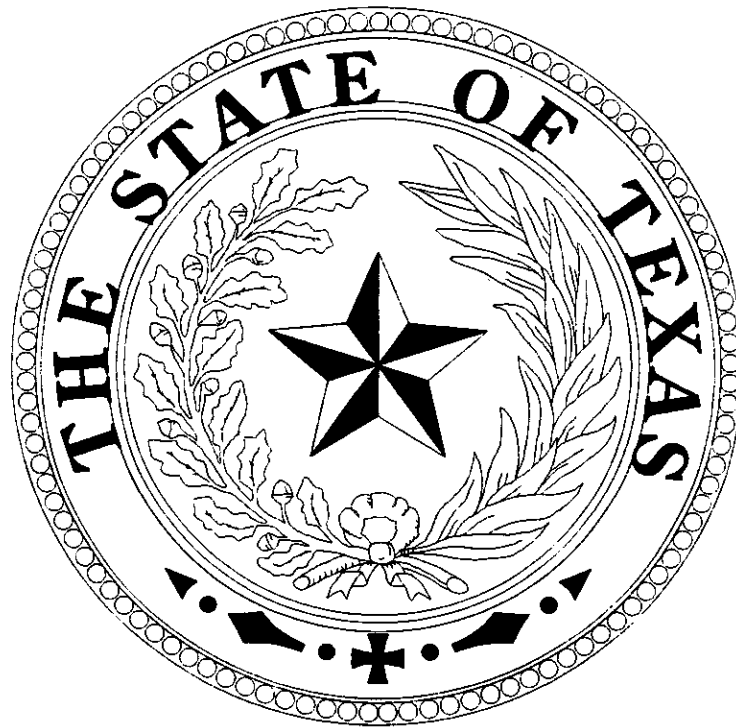


Thursday Afternoon
February 25, 2010
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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ANSWER QUESTION 7 IN THE RED ANSWER BOOK

QUESTION 7

Construction Corp. ("Construction"), a Texas corporation, was duly formed in March 2006 and is in the business of constructing commercial buildings. Ralph is a Construction shareholder, but not an officer or employee. Steve is Construction's president.

Tim owns a number of retail stores. Tim and Ralph are friends and Tim is aware that Ralph is a Construction shareholder. In February 2008, Tim asked Ralph if Construction was interested in building Tim's newest store in Texas. Tim told Ralph that he (Tim) wished to avoid problems that could arise due to a contractor failing to pay for materials and supplies. Tim asked Ralph if Construction was "financially capable" of undertaking the project. Ralph answered that he believed Construction was financially sound and told Tim to call Steve for further information.

Tim called Steve and told Steve that, in order to determine if Construction was financially sound, he (Tim) would like to see a copy of Construction's current financial statement. Steve faxed Tim financial statements indicating that all of Construction's accounts payable were current (which was not true) and that made it appear that Construction had conducted profitable operations in 2007 (which was not true). Steve knew the financial statements were incorrect, but believed that Construction could pay its debt and return to profitability if it could obtain the lucrative contract with Tim.

Tim contracted with Construction to build his new store and agreed to make regular payments to Construction for its work. On several occasions while work was on-going, Steve used funds received from Tim to pay his own salary and some personal expenses, rather than paying suppliers. About half-way through the work, a company from which Construction was leasing equipment repossessed all of Construction's equipment because Construction had not made the lease payments. The repossession of its equipment made it impossible for Construction to complete the job. Tim was forced to hire another company to complete the job, at substantial additional cost. Tim sued Ralph and Steve for fraud.

- 1. Is Ralph liable to Tim? Explain fully.**
- 2. Is Steve liable to Tim? Explain fully.**

Answer the NEXT question in the LIGHT GREEN answer book.

ANSWER QUESTION 8 IN THE LIGHT GREEN ANSWER BOOK

QUESTION 8

In January 2010, Pam, Beth, and Jane formed a Texas general partnership to open a retail store to sell Valentine's Day gifts. The written partnership agreement provides that: (1) the three partners will share profits and losses equally; (2) the partnership will borrow \$20,000 from Investor to purchase fixtures for the store; (3) each partner will deposit \$10,000 into the partnership account to purchase inventory for the store; and (4) the store will close and the partnership will dissolve on February 28, 2010.

After the partnership agreement was signed, the partnership borrowed \$20,000 from Investor and used it to purchase fixtures for the store, as agreed. Each partner also made her required contribution, and the partnership used that \$30,000 to purchase the initial inventory. Before opening the store, the partnership incurred an additional \$7,000 debt to Donna Designer ("Donna") for her help in decorating the store. Additionally, in January 2010, Pam used \$3,000 of her own money to pay store expenses, which the partners all agreed would be repaid to Pam.

Sales at the store were slow. Although Valentine's Day has passed, the store still has a substantial amount of inventory valued at \$5,000, and fixtures valued at \$10,000. The store has not made a profit and does not have any money in its bank account. Donna and Investor both are demanding that they be paid the money they are owed. Beth does not have any more money to put into the partnership, but she believes the partnership can eventually turn a profit and pay its debts if it remains in existence. Pam and Jane have funds they could make available to the partnership but are not as optimistic as Beth about achieving profitability by continuing in business. The partners will meet tomorrow to discuss their options.

- 1. Can the partners avoid dissolving the partnership on February 28, 2010? Explain fully.**
- 2. Assuming the partnership will be dissolved and wound up, (a) what steps must the partners take to wind up the partnership, and (b) what are the rights and obligations of the partners toward the creditors and each other in disposing of the assets and satisfying the partnership's liabilities? Explain fully.**

Answer the NEXT question in the YELLOW answer book.

ANSWER QUESTION 9 IN THE YELLOW ANSWER BOOK

QUESTION 9

Dwight, a single person, was living in a stately nineteenth century historic home in Madison County, Texas, that he inherited from his deceased parents in 2000. Its beautiful furnishings included a crystal chandelier that was installed with special architectural supports when the home was built. Dwight had the chandelier appraised at \$50,000.

On March 8, 2008, Dwight went to Better Buy and made a credit purchase of a new giant flat-panel TV, which he attached with brackets to the bedroom wall in his home. Dwight signed a security agreement giving Better Buy a security interest in the flat-panel TV.

On November 10, 2008, Dwight borrowed \$10,000 from Friendly Bank and signed a security agreement giving Friendly Bank a security interest in the chandelier to secure the repayment of the loan. Friendly Bank filed a financing statement with the Texas Secretary of State listing its name and address as the secured party, listing Dwight and his address as the debtor, and correctly describing the chandelier as the collateral.

On January 13, 2009, Dwight obtained a home equity loan from Domestic Bank and signed a deed of trust giving Domestic Bank a mortgage on his home. Domestic Bank recorded the deed of trust in the real property records of Madison County, Texas, on January 15, 2009.

The air-conditioning compressor at Dwight's home ceased to function in June 2009. On July 5, 2009, Dwight financed the purchase of a new compressor from Heat-n-Air Company. On that date, he signed a security agreement giving Heat-n-Air a security interest in the compressor. The next day, Heat-n-Air installed the compressor by bolting it onto a concrete pad adjacent to the garage of the home. On July 12, 2009, Heat-n-Air filed the security agreement in the real property records of Madison County, Texas. The security agreement contained: the name and address of Heat-n-Air as the secured party; the name and address of Dwight as the debtor; a description and serial number of the compressor as the collateral; and the legal description of the house and lot.

1. Which are the contending parties for a security interest in the chandelier and which party has the superior interest? Explain fully.
2. Which are the contending parties for a security interest in the flat-panel TV and which party has the superior interest? Explain fully.
3. Which are the contending parties for a security interest in the compressor and which party has the superior interest? Explain fully.

Answer the NEXT question in the BLUE answer book.

ANSWER QUESTION 10 IN THE BLUE ANSWER BOOK

QUESTION 10

Rapid Repro, Inc., a Texas corporation, did all of its banking with Donald, a vice president of Bronco Bank. Jeff, the purchasing agent for Rapid Repro, borrowed \$10,000 from Bronco Bank on behalf of Rapid Repro to purchase a high-speed copier for the business. Donald prepared a promissory note on which he accidentally failed to include the name of Rapid Repro, Inc. as borrower. The note recited "...the undersigned borrower agrees to pay the sum of \$10,000 to the order of Bronco Bank within one year from June 1, 2004." Jeff signed only his name on the note.

In January 2005, Bronco Bank sold a group of its promissory notes, including the \$10,000 note signed by Jeff, to Aggressive Bank. Donald delivered the group of promissory notes being sold to Aggressive Bank along with a letter stating, "...Bronco Bank hereby transfers and negotiates to Aggressive Bank the promissory notes listed in this letter." The list included a description of the \$10,000 note signed by Jeff, and the group of notes transferred to Aggressive Bank included that note. The only document in the entire transmittal that contained Donald's signature, as vice president of Bronco Bank, was the letter transmitting the promissory notes. None of the notes was indorsed.

Aggressive Bank misplaced the \$10,000 promissory note signed by Jeff and didn't find it until July 1, 2008. No demands on payments were ever made on the promissory note. It is now February 2010.

1. **Is Jeff likely to be held liable to Aggressive Bank on the note? Explain fully.**
2. **What rights, if any, does Aggressive Bank have to collect on the promissory note? Explain fully.**

Answer the NEXT question in the ORANGE answer book.

ANSWER QUESTION 11 IN THE ORANGE ANSWER BOOK

QUESTION 11

In 2006, Bob, a Texas resident, drafted, dated, and signed a two page typewritten will in which Bob named his brother, Fred, as independent executor of his estate and devised his property, both real and personal, to Fred. On the second page of Bob's will was the following statement:

"The foregoing instrument consisting of two (2) pages, including this page, was signed, sealed, published, and declared by Bob as his Last Will and Testament, in the presence of the two undersigned witnesses, who at his request, and in his presence, subscribed our names hereto as witnesses, and we declare at the time of the execution of this instrument that Bob, according to our best knowledge and belief, was of sound mind and under no constraint."

Bob took two witnesses with him to the office of Mary, a notary public. Bob told Mary the document was his will, described its contents, and said he wanted Mary to notarize his signature. As is customary with notaries public, Mary watched while Bob signed on the signature line and the two witnesses each signed Bob's will in Bob and Mary's presence. Then, just beneath the aforementioned statement on the second page, Mary signed her name and sealed it with her notary seal in the presence of Bob and the two witnesses.

There were no separate signature lines for the witnesses to sign. On the back of the second page of Bob's will were what appeared to be two signatures with the word "witness" handwritten beneath each signature. One signature was illegible, and the other appeared to be "Jack."

In 2007, Bob married Susan. Bob died in 2008 without ever having changed his will.

Fred filed Bob's will for probate in 2009. Susan filed a contest to the probate of Bob's will on the grounds that: (1) Bob's will was void on its face because it could not be proved that Bob's will had been attested to by two witnesses and (2) Susan's marriage to Bob created the presumption that Bob's will made prior to their marriage had been revoked.

Fred was unable to find the two witnesses who had signed Bob's will on the back of the second page but was able to call Mary to testify about her pre-signing discussion with Bob before she notarized the will.

1. **Should the court admit Bob's will to probate? Explain fully.**
2. **How should Bob's estate be distributed? Explain fully.**

Answer the NEXT question in the PURPLE answer book.

ANSWER QUESTION 12 IN THE PURPLE ANSWER BOOK

QUESTION 12

Jeff and Irene married in 1986. Three children were born to their marriage. In 2004, Jeff and Irene adopted an adult named Faye. In 2005, Jeff executed a valid attested self-proved will which named Irene as independent executor and which contained the following provision:

I hereby devise and bequeath all of my property, both real and personal, which consists of five million dollars in cash, real property and securities, one-half to my darling wife, Irene, and one-half to be shared equally by and between my children born of my body during my marriage to Irene.

In 2006 Jeff and Irene adopted an infant named William. Jeff died in 2007 survived by Irene, his three natural children, and Faye and William.

After Jeff's will was admitted to probate in 2008, Irene, in her capacity as the independent executor of Jeff's estate, began to distribute one-half of Jeff's estate to children born of her marriage to Jeff without any distribution to Faye or William. Faye, individually and as next friend of William, filed a will contest objecting to Irene's failure to include them as beneficiaries in the distribution of one-half of Jeff's estate.

1. To whom and in what proportions should Jeff's estate be distributed? Explain fully.

This concludes the Texas Essay portion of the exam.

Be certain that you write the pledge on the back of your PURPLE answer book.

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I UNDERSTAND THAT THE FOLLOWING ACTS ALSO CONSTITUTE MISCONDUCT: COPYING OR RECEIVING ANY INFORMATION FROM ANY EXAMINEE, GIVING OR TRANSMITTING INFORMATION TO ANY EXAMINEE, DISCUSSING QUESTIONS WITH ANYONE BEFORE THE CONCLUSION OF THE EXAM, LEAVING THE SECURED AREA DURING ANY PORTION OF THE EXAM, WRITING AFTER TIME IS CALLED, TAKING ANY EXAM ANSWERS OUTSIDE OF THE EXAM ROOM, AND ANY OTHER ACT THAT MIGHT COMPROMISE THE SECURITY OR INTEGRITY OF THE EXAM. I UNDERSTAND THAT ANY SUCH MISCONDUCT MAY RESULT IN A HEARING BEFORE THE BOARD, THE OUTCOME OF WHICH COULD INCLUDE NULLIFICATION OF MY EXAM SCORES OR A FINDING THAT I LACK THE PRESENT GOOD MORAL CHARACTER REQUIRED FOR ADMISSION.

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