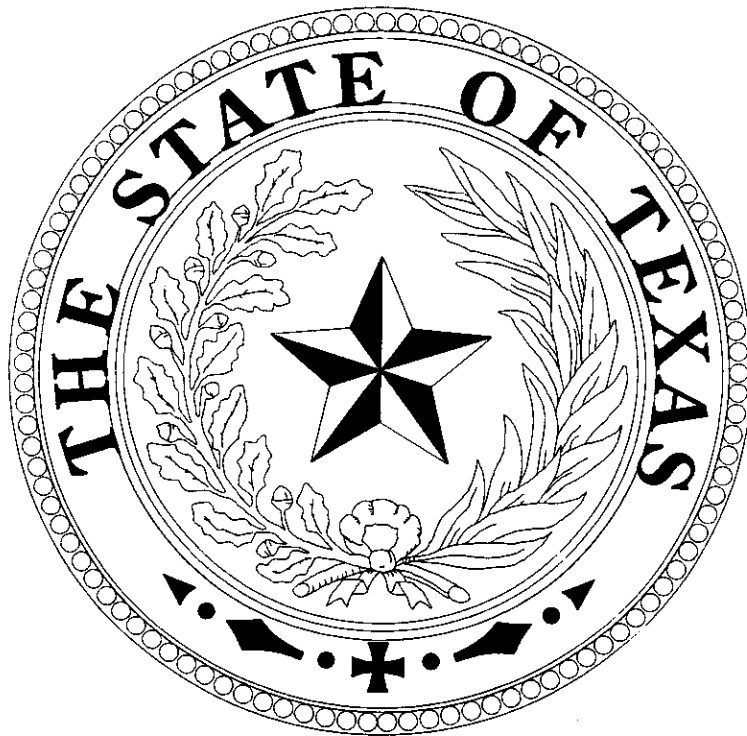


Thursday Morning
July 29, 2010
Essay Questions 1 - 6



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

On July 1, Noah ordered and received a stationary exercise bicycle ("exercycle") from Bodybuilders, Inc. He made a \$49 down payment and agreed to pay the balance of \$129 within 30 days. Every time he used the exercycle, the chain would slip off the sprocket because the sprocket was too small. Noah thinks that the sprocket can be replaced by a bicycle shop. Therefore, he wants to keep the exercycle but believes he should not have to pay the full purchase price because Bodybuilders breached a warranty.

Instead of paying the entire \$129 balance, Noah, on July 29, sent Bodybuilders a \$79 check payable to Bodybuilders. On the face of the check, Noah wrote conspicuously, "Payment in full due to breach of warranty." On July 30, the check was received by Bodybuilders' accounts receivable clerk, whose duties were limited to receiving and recording payments for merchandise sold and making bank deposits. The clerk followed the company procedure to stamp a Bodybuilders' indorsement on the back of the check, make an entry in the customer's account, and deposit the check in the bank, all of which he did with respect to Noah's check.

Several weeks later, Thor, the accounts receivable manager for Bodybuilders, noticed that Noah had an overdue balance of \$50. Thor called Noah, and Noah told him that he had paid a lesser amount in full satisfaction of the debt because Bodybuilders had breached its warranty. Thor obtained a copy of the check from the bank and discovered the "Payment in full due to breach of warranty" notation on the check. On October 10, Bodybuilders sent Noah a check for \$79 and a letter informing him that he still owed the original balance of \$129.

- 1. What argument, if any, can Noah make under the Texas Uniform Commercial Code that the check he sent satisfied his debt to Bodybuilders? Explain fully.**
- 2. What argument, if any, can Bodybuilders make under the Texas Uniform Commercial Code in response to Noah's argument? Explain fully.**
- 3. Which party is likely to prevail? Explain fully.**

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

QUESTION 2

George sells electronic equipment and computers in his retail store. Last January, George financed his inventory with Ram Bank by giving Ram Bank a security interest in his current and after-acquired inventory. Ram Bank properly filed a financing statement with the Texas Secretary of State.

On February 1, George ordered five laptop computers from Archway Computers, agreeing to pay for them in sixty days. George signed a security agreement giving Archway a security interest in the five computers. Archway filed a proper financing statement with the Texas Secretary of State prior to delivering the computers to George on February 7.

George sold one of the Archway computers to Wilson on February 10. Wilson paid for the computer with a \$2,000 check.

As of February 25, George had not yet deposited the \$2,000 check.

Who among the parties mentioned above (Ram Bank, Archway Computers, Wilson, and George), has the superior interest, as of February 25, in the following property:

- 1. The four Archway computers still in George's inventory;**
- 2. The Archway computer sold to Wilson; and**
- 3. The \$2,000 check?**

Explain your answers fully.

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

QUESTION 3

In 1980, Robert and Betty married in Texas. After the marriage, Betty never worked outside the home. Robert controlled and directed all the family's financial affairs and rarely gave Betty any information about their finances. In 1990, Robert founded an air transport company called Charter Air using community assets. He managed the business without Betty's involvement and never shared with her any information about the operation and condition of the company.

In 1999, Charter Air began to experience financial difficulties. Robert told Betty that, to protect the family's assets from financial ruin, it would be necessary for them to enter into a marital property agreement to partition or exchange their community estate. Robert presented a draft of an agreement that purported to partition to Betty, as her separate property, the family home and its contents, an automobile, and \$100,000 in cash. The agreement partitioned to Robert, as his separate property, all interest in Charter Air and its equipment, an automobile, and a boat. The agreement also partitioned to Robert and Betty, as their separate property, their respective future earnings and income, after-acquired property in their respective names, and all increases of their respective separate properties. Aside from the recitations of the property to be partitioned, the agreement contained no details as to the value of the property.

When Robert gave Betty the draft agreement, he told her she should take it to an attorney to get some advice. Betty consulted Jane, her neighbor, who was an attorney. Jane told Betty the agreement appeared to be one-sided, especially because it partitioned to Robert the entire interest in Charter Air. Jane told her she should obtain from Robert full disclosures of the family's net worth, audited financial statements concerning Charter Air, and information about Robert's present income. She also told Betty not to sign the agreement until she understood the effect of the partition and was fully satisfied that she was getting a fair deal.

When Betty asked Robert for this information, Robert showed her a list of the inventory of Charter Air and told her his opinion of the family's net worth. He told her that his only purpose in suggesting the agreement was to protect the family's assets from creditors during the hard times Charter Air was currently experiencing. He also told her not to worry because he would never try to enforce the agreement against her. Relying on Robert's representations, Betty signed the agreement.

In 2010, Robert filed for divorce and sought to enforce the agreement.

Betty retained an attorney to represent her in the divorce action. She seeks advice on the following:

- 1. Does Texas law allow a married couple to partition or exchange their community property, and, if so, is it lawful for such a partition to include partition of future income, increases, and after-acquired property? Explain fully.**
- 2. What statutory defenses, if any, does she have to prevent enforcement of the agreement, and what is the likelihood such statutory defenses will succeed? Explain fully.**
- 3. What common law defenses, if any, does she have to prevent enforcement of the agreement? Explain fully.**

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

QUESTION 4

Mother and Father had one son (“Child”) born during their marriage in 1998. In 2000, Mother and Father divorced and Mother was awarded sole managing conservatorship of Child. In 2009, Father filed a petition to modify the parent-child relationship, seeking to be appointed sole managing conservator of Child.

At trial, Father presented the testimony of Psychotherapist, who had seven therapy sessions with Child. Psychotherapist testified that, at their first session, Child claimed that Mother had been physically abusive to him and asked how he could escape from Mother’s home. Psychotherapist also testified, however, that Child loved Mother and that Child felt protective toward Mother.

Father also produced evidence that records from the local police department detailed several calls to Mother’s home. In one incident, Child reported that Mother threatened to strike Child with a skillet and that Child stated that Mother had made similar threats in the past. The principal of Child’s middle school testified that Mother’s contacts with the school were often contentious, while Father had always behaved appropriately.

Mother testified, denying that she ever hurt Child. Mother said Father constantly threatens her with legal action. Mother also testified that Child is involved in church, school, and sports activities and that Child wanted to continue in those activities; that Child loves animals and Child has several pets; that Mother provides Child with a nice home and that Child is happy living with Mother.

The Trial Court awarded sole managing conservatorship of Child to Father. The Trial Court found that Mother’s monthly net resources are \$2500. The Trial Court signed a child support order requiring Mother to pay monthly child support in the sum of \$750, but the Trial Court did not file findings of fact with regard to the child support order. Although Mother did not make an oral request for findings of fact at the hearing and did not make a written request for findings of fact within 10 days of the date of the hearing, she contends on appeal that she was entitled to findings of fact with regards to the child support order.

- 1. Did the Trial Court err in awarding sole conservatorship of Child to Father? Explain fully.**

- 2. Did the Trial Court err in:**
 - a) Ordering Mother to pay child support in the sum of \$750?**
 - b) Signing the child support order without issuing findings of fact?****Explain fully as to each.**

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

QUESTION 5

Beth and Mike want to go into business together making and selling cupcakes and other desserts. They want to name their company “The Best Cupcakes.” They will have retail stores in Dallas and Collin counties, Texas, with the store in Dallas county being their principal store.

They are trying to decide whether to form a general partnership, a limited liability partnership, or a limited liability company, and they seek advice on the relative advantages and disadvantages of doing business under one or the other of these forms of entity.

- 1. What are the advantages and disadvantages of forming their business as a partnership, as a limited liability partnership, or as a limited liability company? Explain fully.**
- 2. What are the steps required for Beth and Mike to create and lawfully commence “The Best Cupcakes” as a general partnership, a limited liability partnership, or a limited liability company? Explain fully.**

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

QUESTION 6

Walt and Kate designed an innovative software program they wanted to sell to the general public. They duly formed WK Solutions, Inc. (“WK”), and after a period of great success, they sold shares of stock in WK to the general public. Walt, Kate, and three other people who were instrumental in WK’s success served on WK’s board of directors.

A few months after WK’s initial public offering, Pirate Software Co. (“Pirate”) began selling a software program that was identical to WK’s innovative software program. WK’s board of directors considered suing Pirate for copyright infringement, but decided that WK’s money would be better spent purchasing advertising to compete against Pirate rather than paying lawyer fees to sue Pirate. After reading in the newspaper about Pirate’s infringement and WK’s decision not to sue Pirate, Rick purchased 1000 shares of WK stock and, the next day, filed a derivative action against Pirate for infringement of WK’s copyright.

In the meantime, completely independent of their relationship to WK, Walt and Kate developed a digital information storage device they believed they could market successfully. In order to limit ownership to themselves, they want to consider forming a close corporation.

- 1. What is a derivative action and upon what grounds, if any, may the board of directors of WK have the suit dismissed? Explain fully.**
- 2. What steps must Walt and Kate take to form a close corporation, what information must they furnish in the process, and, in light of their desire to limit ownership to themselves, what are the benefits of a close corporation over an ordinary corporation? Explain fully.**

This concludes the morning portion of the Texas Essay exam.