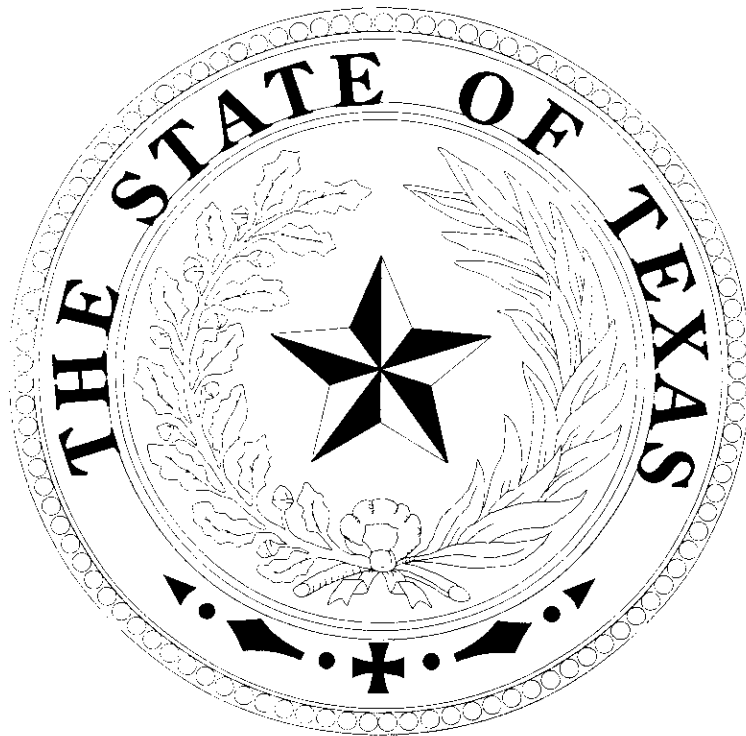


Thursday Afternoon
July 29, 2010
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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

QUESTION 7

Fred, a widower and Texas resident, had three children – Ellen, Phil, and Courtney. In 1995, Fred executed a valid will, which stated in its entirety:

“I hereby name my daughter, Courtney, as executor of my estate, to serve without bond, and to have the power to sell and/or distribute any or all assets of the estate without approval of any court or judge. I direct that my entire estate be distributed in equal shares to my children, Ellen, Phil, and Courtney. I intentionally make no provision for any children I may have in the future.”

Fred placed the original will in a safe at home and left a copy with Larry, the lawyer who prepared the will.

In 2004, Fred adopted his 17-year-old godson, Richard, who had no living relatives. Fred took out a \$50,000 life insurance policy that named Richard as the sole beneficiary, but named no contingent beneficiary. Shortly after he was adopted, Richard became addicted to drugs and alcohol, and his relationship with Fred and Fred’s family deteriorated.

In 2006, Richard shot Fred to death during an argument. Upon arriving at the scene, the police found the safe open, with a copy of the life insurance policy in it. Phil reported to the police that his father usually kept a substantial amount of cash in the safe, along with important papers and a 9mm pistol. When Richard was arrested hours after the murder, the police found \$5000 in cash in his apartment, the murder weapon (Fred’s 9mm pistol), and a metal trashcan containing charred remains of burned papers. Richard was later found guilty of Fred’s murder and sentenced to prison.

Distraught over her father’s death, Courtney could not bring herself to serve as her father’s executor. Courtney, Ellen, and Phil then agreed that Phil should be appointed as executor, and Phil agreed to serve in that capacity.

At the time of Fred’s death, his estate consisted of money and property worth in excess of \$10 million. Fred was survived by Ellen, Phil, Courtney, and Richard.

Phil obtained the copy of the will from Larry and, after Richard’s conviction, sought to admit it for probate. Attached to the probate application was an affidavit from Larry stating that: (i) he and Fred met at Fred’s home a week before the murder to discuss Fred’s desire to donate or bequeath money to his favorite charity; (ii) Fred and Larry reviewed Fred’s 1995 will during that meeting, and Larry saw Fred put it back in the safe and close and lock the safe door; and (iii) Fred did not instruct Larry to make any changes to the will.

- 1. Should the copy of the will be admitted to probate? Explain fully.**
- 2. Who should be appointed as executor, and should the administration be dependent or independent? Explain fully.**
- 3. Who is entitled to the life insurance proceeds? Explain fully.**

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

QUESTION 8

Joe Earl, a Texas resident, died intestate last month. His wife Sarah, whom he married in 1964, died in 1998. He and Sarah had two natural children of their marriage, Blanche and Curtis, and an adopted child, Rex. Rex died two years ago, leaving three children: Xavier, Yanni, and Zoe.

Several months before his death, Joe Earl was told by Vera, a woman he dated briefly in 1999 (but never married or attempted to marry) that he was the father of her 11-year-old son, Andy, and she gave him a copy of Andy's birth certificate, on which she had listed Joe Earl as Andy's father. This was the first Joe Earl had heard of Andy's existence, and Joe Earl denied that he was Andy's father. Joe Earl died before a previously scheduled paternity test could be administered.

Joe Earl is survived by Blanche, Curtis, Xavier, Yanni, Zoe, Andy, and Sarah's brother, Robbie, all of whom claim the right to inherit from Joe Earl ("Claimants").

At the time of his death, Joe Earl owned the following assets:

- a. A \$100,000 retirement account that names Blanche and Curtis as equal 50% beneficiaries in the event of Joe Earl's death ("Retirement Account");
- b. A \$500,000 life insurance policy that names Blanche and Curtis as equal 50% beneficiaries ("Life Insurance Policy");
- c. A \$25,000 certificate of deposit account, held with Blanche as joint tenant with right of survivorship ("C.D.");
- d. A fleet of antique automobiles valued at \$250,000, jointly titled in the names of Robbie and Joe Earl and registered in right of survivorship with the State of Texas ("Automobiles"); and
- e. Money, real property and personal property with an aggregate value of \$1,000,000 ("Other Property").

1. **Which of the Claimants are entitled to inherit from Joe Earl and which are not? Explain fully.**
2. **To whom and in what proportions should the following assets be distributed? Explain fully.**
 - a. **Retirement Account**
 - b. **Life Insurance Policy**
 - c. **C.D.**
 - d. **Automobiles**
 - e. **Other Property**

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

QUESTION 9

In 2005, Elizabeth, a highly paid executive officer of a Texas Corporation, established an irrevocable trust naming her nephew Daniel as the beneficiary. The trust is funded with the income Elizabeth receives from mineral interests she owns. Elizabeth named herself as trustee of the trust. The trust document does not provide for a successor trustee.

The trust provides an annual distribution of income to Daniel for a 20-year term. At the end of the 20-year term, the corpus of the trust is to be transferred to Daniel, free of the trust. The trust also contains a spendthrift provision that reads: "The beneficiary of this trust is hereby restrained from anticipating, encumbering, alienating, or in any other manner assigning or disposing of his interest in either the corpus or income of the trust estate, and is without power to do so."

In January 2008, a judgment was entered against Daniel in a breach of contract suit. Camco, Inc. ("Camco"), the judgment creditor, threatened Daniel that, unless Daniel signed an irrevocable assignment to Camco of the undistributed trust income for the next five years, it would obtain a writ of execution and levy on the trust corpus to satisfy the judgment. Daniel is seriously considering signing the assignment for fear that, if he does not, Camco will levy on and deplete the corpus of the trust.

In 2009, Elizabeth was involved in a serious accident, became completely incapacitated, lost all her earning capacity, and was unable to carry out her duties as trustee. Graham was appointed by the Court to be her guardian. Graham notified Daniel that, in light of Elizabeth's condition, he was terminating the trust and that Daniel will no longer receive income payments.

- 1. Can Daniel, if he wishes to do so, assign the undistributed income to Camco in 2008 to satisfy the judgment against him? Explain fully.**
- 2. Can Camco reach the trust corpus in 2008 to satisfy its judgment? Explain fully.**
- 3. Does Elizabeth's inability to serve as trustee in 2009 cause the trust to fail? Explain fully.**
- 4. Can Graham unilaterally revoke the trust or terminate it by legal process in 2009? Explain fully.**

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

QUESTION 10

Sharon went to Dean's Marine intending to purchase a boat to use at her lake house in the Texas Hill Country. Dean, the sole proprietor of Dean's Marine, told Sharon that he had a previously owned 2007 WaveSlasher that had just been placed on the lot. He told Sharon that, although it was used, the WaveSlasher was in great condition and ran "like new." He also told her that the purchase price was \$3,000.

Sharon told Dean that she knew nothing about mechanical matters, and that she needed a boat that was in good condition because she didn't want to get stranded on the lake. Dean assured her that the WaveSlasher was ready for use and showed her the Dean's Marine "30-point Quality Inspection Checklist," which indicated that all parts of the WaveSlasher had been inspected by his mechanic and were in good working order. Sharon, reassured by the inspection report, agreed to buy the WaveSlasher. The contract of sale included a statement in conspicuous, large print that the WaveSlasher was being sold "As is. No warranties."

In fact, the mechanic employed by Dean's Marine had quit the day before Dean's Marine acquired the WaveSlasher. Dean, who is not a mechanic, had filled out the "30-point Quality Inspection Checklist" himself, never having started the engine and after having done only a cursory, visual inspection of the exterior of the WaveSlasher.

The day after she purchased the WaveSlasher, Sharon went to the lake to try it out. After running it for about an hour, she heard a grinding noise and smelled smoke. A few minutes later, the WaveSlasher's engine stopped running. Sharon was stranded on the lake for several hours and had to flag down a passing boater to tow her to shore. Her wait in the sun caused her to suffer a severe and painful sunburn, which had to be treated by her physician. She was so upset about being stranded on the lake that she experienced nightmares about the incident for weeks afterwards.

Sharon took the WaveSlasher to a mechanic the following day and paid him to inspect it. The mechanic told her that any competent inspection would have revealed that there were obvious signs that the WaveSlasher's engine had been poorly maintained for a long period of time.

- 1. What claims, if any, might Sharon assert against Dean's Marine under the Texas Deceptive Trade Practices Act? Explain fully.**
- 2. What damages and other remedies are available to Sharon for her claims under the Texas Deceptive Trade Practices Act? Explain fully.**

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

QUESTION 11

Mona owned Whiteacre, a five-acre tract in rural Comal County, Texas. Gail owned Greenacre, a ten-acre riverfront tract adjoining Whiteacre. Greenacre was improved with a vacation cabin.

In September 2009, Gail hired Workman to build a large addition to Gail's vacation cabin located on Greenacre. In November 2009, with knowledge that Workman had not yet finished the addition, Mona offered to purchase and Gail agreed to sell Greenacre. On December 1, 2009, Mona made full payment to Gail of the agreed sale price. Gail then signed and acknowledged a Warranty Deed conveying Greenacre to Mona that met all requirements for a valid deed, including a complete legal description of Greenacre. The Warranty Deed was immediately and properly filed in the Comal County Real Property Records. Gail had not paid Workman, and Mona did not ask if Workman had been paid.

On December 4, 2009, Workman timely filed with the Comal County Clerk a proper affidavit claiming a mechanic's lien on Greenacre. Because Gail had always purported to own Greenacre, Workman immediately sent a copy of the affidavit to Gail by certified mail.

Gail, knowing that Ben was interested in purchasing Whiteacre and some river frontage on Greenacre, drafted a Warranty Deed, which purported to convey Whiteacre from Mona to Gail. On December 7, 2009, pretending to be Mona, Gail forged Mona's signature to the Warranty Deed before a notary, who required no proof of identity. The forged Warranty Deed appeared complete and correct, and Gail immediately recorded it in the Comal County Real Property Records.

On December 14, 2009, Gail told Ben that she had purchased Whiteacre, and showed him the recorded forged Warranty Deed. Ben did not know that Gail had sold Greenacre to Mona. Ben offered to buy Whiteacre and two riverfront acres of Greenacre from Gail. In exchange for payment of a fair price by Ben, Gail signed, acknowledged, and delivered to Ben a Warranty Deed, which purported to convey both Whiteacre (with a full description of that five-acre tract), and a portion of Greenacre, which she described as "two acres on the river side out of Greenacre." Ben duly recorded this Warranty Deed in the Comal County Real Property Records.

Mona, Ben, and Workman are now fully aware of the all the foregoing facts.

1. **What rights, if any, does Workman have in Greenacre, and what must he do to enforce those rights? Explain fully.**
2. **What rights, if any, does Ben have in Greenacre? Explain fully.**
3. **Who owns Whiteacre? Explain fully.**

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

QUESTION 12

Jim, a widower, owned fee simple title to Blackacre and Redacre, both located in Liberty County, Texas. On April 1, 2009, Jim entered into two oil and gas leases with Big Oil Company ("Big Oil"), one covering Blackacre and the other covering Redacre.

Each lease was dated April 1, 2009. The leases included the following provisions:

- **Term of Lease:** The term of the Blackacre lease was for "two years from April 1, 2009, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from Blackacre." The term of the Redacre lease was for "one year from April 1, 2009, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from Redacre."
- **Delay Rental:** The Blackacre lease stated, "if operations for drilling to a depth of at least 1,000 feet are not underway within one year from the date of the lease, the lease shall terminate unless Big Oil pays to Jim the sum of \$3,000 as a delay rental on or before April 1, 2010."
- **Force Majeure:** Both leases stated "When drilling or other operations are delayed or interrupted by fire, storm, flood, war, rebellion, insurrection, riot or strike, or as a result of any cause whatsoever beyond the control of Big Oil, the time of such delay or interruption shall not be counted against Big Oil."

On February 15, 2010, Big Oil drilled to a depth of 300 feet and completed a gas well on Blackacre capable of producing a very small amount of gas that would be insufficient to pay costs of production. Big Oil immediately shut in the gas well.

On March 31, 2010, an employee of Big Oil was on the way to pay Jim the delay rental of \$3,000 for the Blackacre lease, when the employee was involved in a serious accident. Consequently, the delay rental payment was not made, which Big Oil did not realize until April 30, 2010. On that day, Big Oil made the \$3,000 payment, and sent a letter to Jim stating that the failure to make a payment on or before April 1, 2010 was caused by an accident beyond its control so that the late payment was excused by the *force majeure* clause.

Also on February 15, 2010, Big Oil completed an oil well on Redacre that produced paying quantities of oil. On April 5, 2010, a small fire caused by a lightning strike at the oil well on Redacre caused its production to be shut down. Repairs were begun immediately, were completed on April 15, 2010, and production resumed on Redacre the day repairs were completed. Big Oil sent Jim a letter informing him that production on Redacre had resumed on April 15, 2010.

On May 4, 2010, Jim returned to Big Oil the \$3,000 delay rental payment and declared that he considered both leases terminated.

1. Is Big Oil's lease of Blackacre terminated? Explain fully.
2. Is Big Oil's lease of Redacre terminated? 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.**

**READ THE FOLLOWING TEXAS BAR EXAMINATION
MISCONDUCT POLICY STATEMENT AND PLEDGE**

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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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