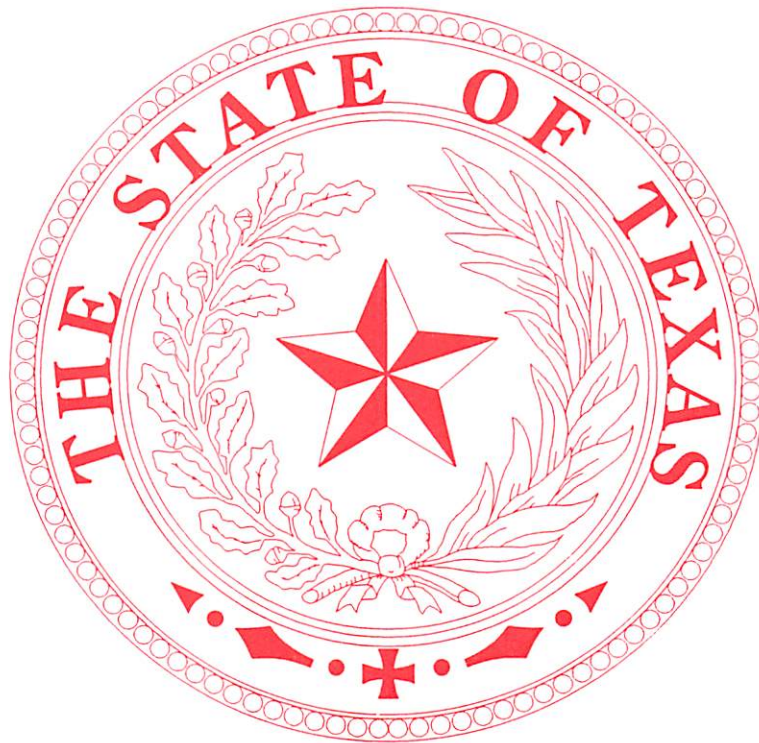


Thursday Morning
July 28, 2011
Essay Questions 1 - 6



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

Hank and Wendy married in 1989. Three children were born of the marriage. In 2003, Hank and Wendy adopted an adult named Agnes. Hank died in 2005. In 2006, Wendy executed a valid, attested, self-proved will that named her sister Sue as independent executor and contained the following provision:

“I hereby bequeath and devise all my property, both real and personal, to the children born of my body during my marriage to Hank.”

In 2008, Wendy adopted an infant named Brad. Wendy died in early 2010, survived by her three natural children, and Agnes and Brad.

After Wendy’s will was admitted to probate in late 2010, Sue, in her capacity as independent executor of Wendy’s estate, notified Wendy’s survivors of her intent to distribute the entire estate to Wendy’s three natural children, with no distribution to Agnes or Brad. Agnes, individually and as next friend of Brad, objected to Sue’s failure to include her and Brad in the distribution of Wendy’s estate.

To whom and in what proportions should Wendy’s estate be distributed? 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

Mark and Pam married in 2002 and resided in Texas. No children were born of, or adopted during, their marriage. Mark, however, acknowledged his son, Billy, who was born of a non-marital relationship prior to Mark's marriage to Pam. Billy has lived with Mark since his birth.

In 2009, Mark and Pam died in an automobile accident. Pam died instantly, and Mark died the next day. Neither left a will.

At the time of their deaths, Mark and Pam owned the following property, all of which was acquired during their marriage:

- (a) a homestead purchased in 2007;
- (b) a \$500,000 life insurance policy naming Mark as the insured, Pam as the beneficiary, and Mark's estate as the default beneficiary;
- (c) a \$100,000 life insurance policy naming Pam as the insured and her niece, Sara, as the beneficiary;
- (d) a \$100,000 joint savings account with a right of survivorship provision; and
- (e) a vintage motorcycle collection worth \$1 million that Mark inherited from his father.

Mark is survived by his son, Billy. Pam is survived by her niece, Sara.

How are the estates of Mark and Pam to be distributed? Explain fully.

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

QUESTION 3

On January 5, 2009, Bjorn was at a coffee shop while Scrub, the owner of a pest control business, was fumigating Bjorn's apartment. While in the apartment, Scrub stole check no. 4009 from Bjorn's Eagle Bank checkbook, made it payable to himself for \$1,000, and forged Bjorn's name as maker. Later that afternoon, Scrub indorsed and deposited that check into his account at Roach Bank. Upon presentment on January 7, 2009, Eagle Bank paid Roach Bank on that check.

On December 5, 2009, Bjorn received an invoice for \$1,250 from Clark Scott, a law firm that was doing estate planning work for Bjorn. Bjorn promptly signed check no. 5061 as maker on his account at Eagle Bank, made it payable to Clark Scott for \$1,250, and mailed it the same day to Clark Scott. While walking through the Clark Scott office on December 11, Woodford, a client of Clark Scott, secretly pilfered that check from the firm's bookkeeper's desk. Woodford gave the check to his friend, Clark S. Reavis, who altered the payee of the check to read "Clark Scott Reavis," indorsed it, and cashed it at Credulous Bank on December 11, 2009. Credulous Bank presented the check, and Eagle Bank paid it on December 13, 2009.

Eagle Bank regularly sent out a monthly statement to its customers, including Bjorn, on the fifth day of each succeeding month. The statements provided the check numbers, amounts, and payment dates for all checks paid by Eagle Bank during the previous month. Copies of the checks did not accompany the statements. Bjorn received all of his statements within three days of their being sent.

On March 3, 2010, Bjorn reviewed all of his 2009 Eagle Bank statements in preparation for filing his income taxes. He noticed that the \$1,000 check paid on January 7, 2009, did not match the stubs in his checkbook. On that same day, March 3, 2010, Bjorn received a notice from Clark Scott informing him that it had not received his payment for the December invoice for \$1,250. Bjorn obtained copies of checks 4009 and 5061 from Eagle Bank on March 7, 2010, and, on that same day, Bjorn notified Eagle Bank that those checks were not properly payable and demanded Eagle Bank credit this account for \$1,000 and \$1,250.

- 1. Must Eagle Bank credit Bjorn's account for \$1,000 (check no. 4009)? Explain fully.**
- 2. Assume that, because Bjorn is such a good customer, Eagle Bank does credit Bjorn's account for \$1,000 (check no. 4009). What rights, if any, does Eagle Bank have to recover on that check from Roach Bank? Explain fully.**
- 3. Must Eagle Bank credit Bjorn's account for \$1,250 (check no. 5061)? Explain fully.**
- 4. Assume that, because Bjorn is such a good customer, Eagle Bank does credit Bjorn's account for \$1,250 (check no. 5061). What rights, if any, does Eagle Bank have to recover from Credulous Bank on that check? 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

Hilbert operated a food catering business. In April 2010, Hilbert persuaded his sister-in-law, Ruth, to loan him \$1,000. Hilbert told Ruth she could keep his mobile propane pizza oven until he repaid her. Ruth promptly put the pizza oven in her garage.

Hilbert needed additional money to replenish his food inventory because his best customer, Wonderful Weddings, Inc., had not paid Hilbert the \$10,000 it owed to him. On May 5, 2010, Hilbert borrowed \$5,000 from Bank. Hilbert secured the loan by signing a security agreement giving Bank a security interest in the following: "all accounts, equipment, and all other assets owned by Hilbert." Bank properly filed a financing statement with the Texas Secretary of State on May 6, 2010.

On June 24, 2010, Hilbert borrowed \$8,000 from his brother-in-law, Walter, and signed a document granting Walter a security interest in the following: "Hilbert's personal gold coin collection located in Hilbert's safe deposit box, and in all other assets owned by Hilbert."

Who among Hilbert, Ruth, Bank, and Walter has the superior interest in:

- 1. The gold coin collection? Explain fully.**
- 2. The food inventory? Explain fully.**
- 3. The pizza oven? Explain fully.**

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

QUESTION 5

Susan, a resident of Bexar County, Texas, was planning to go on an extended trip to study meditation in the Himalayas. Before leaving, she established a charitable trust granting \$500,000 to the Institute for the Advancement of Spiritual Endeavors ("The Institute") for the purpose of "promoting the study of meditation techniques." She named her sister, Annette, as Trustee. The trust document contained no provision for a successor beneficiary.

Two months after Susan departed, The Institute's building and archives were destroyed by fire, and its directors announced it would not reopen.

Annette, an animal lover, decided to designate the Animal Shelter as the new beneficiary of the trust. She did not seek court approval for the designation, and did not send out any notification of the new designation to any state agency.

Upon hearing about the fire and of Annette's new designation, the Director of the Center for Meditation Study ("The Center") filed a suit in Bexar County District Court against Annette and the Animal Shelter alleging that Annette's designation of the new beneficiary was improper because Annette had not sought court approval. In the suit, The Center sought to have itself named the new beneficiary of the trust on the ground that its purposes were more consistent with Susan's intent in establishing the trust. Annette and the Animal Shelter were the only defendants named in the lawsuit.

After a protracted period of litigation, Annette, the Animal Shelter, and The Center agreed to settle the lawsuit, with The Center receiving one-half of the corpus of the trust. The trial judge entered a final order approving the settlement.

The Texas Attorney General's office timely filed a motion seeking to revoke the settlement agreement. The court ruled in favor of the Attorney General, setting aside the settlement agreement.

Upon her return from the Himalayas, Susan learned of these events and, angry over Annette's actions, filed suit to have Annette removed as trustee. Annette filed a pleading challenging Susan's standing to bring the suit.

- 1. Did The Center have legal standing to bring suit challenging Annette's designation of the new beneficiary of the trust? Explain fully.**
- 2. Was it within Annette's powers as Trustee to designate the Animal Shelter as the new trust beneficiary? Explain fully.**
- 3. Did the court err in setting aside the settlement agreement? Explain fully.**
- 4. How should the court rule on Annette's challenge to Susan's standing? 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

Leonard leased the apartment over his garage to Terry. Because he was concerned about crime in the neighborhood, Leonard contacted Quality Security Systems (“Quality”) to look into a security system for Terry’s apartment. Quality’s salesperson, Chester, told Leonard that Quality’s system: was the best and most reliable system available on the market; would be installed and tested by experienced, licensed, and bonded security specialists; and had been awarded the highest rating by the Security Specialists Association of America (SSAA).

Persuaded by Chester’s sales pitch, Leonard agreed to purchase a security system from Quality for Terry’s apartment. Attached to the contract of sale was a form entitled “Waiver of Consumer Rights.” It was printed in large, bold print. The form stated that, by signing the contract, the purchaser waived all consumer rights under the Texas Deceptive Trade Practices Act (DTPA). Leonard signed the contract and the waiver form. An employee of Quality installed a security system in Terry’s apartment.

Two months later, on January 10, 2010, Terry’s apartment was burglarized and all of her valuables were stolen. At the time of the burglary, the security system’s alarm did not sound. On February 10, 2010, without giving prior notice to Quality, Terry filed suit against Quality alleging violations of the DTPA. Quality filed its answer to Terry’s complaint on March 10, 2010. As affirmative defenses, Quality asserted that: (1) Terry was not a “consumer” as defined in the DTPA and therefore had no standing to sue; and (2) Terry’s suit was barred by the waiver in the form signed by Leonard.

At trial, Quality moved the court for the first time to dismiss Terry’s suit on the ground that Terry had failed to give Quality timely and proper notice of her claim as required by the DTPA. The court denied the motion to dismiss.

The evidence introduced at trial showed that the Quality employee who installed the security system was neither licensed nor bonded, had never installed a security system, had not properly connected the alarm, and never tested it. The evidence further showed that Quality’s system had been rated “inferior” and stripped of its SSAA rating two years before Leonard signed the contract.

- 1. Should Quality prevail on its affirmative defense that Terry is not a consumer? Explain fully.**
- 2. Should Quality prevail on its affirmative defense that Terry’s suit is barred by the waiver signed by Leonard? Explain fully.**
- 3. Should the court grant Quality’s Motion to Dismiss Terry’s lawsuit? Explain fully.**
- 4. Assuming Terry is a consumer under the DTPA, what claims, if any, does she have against Quality under the DTPA? Explain fully.**

This concludes the morning portion of the Texas Essay exam.