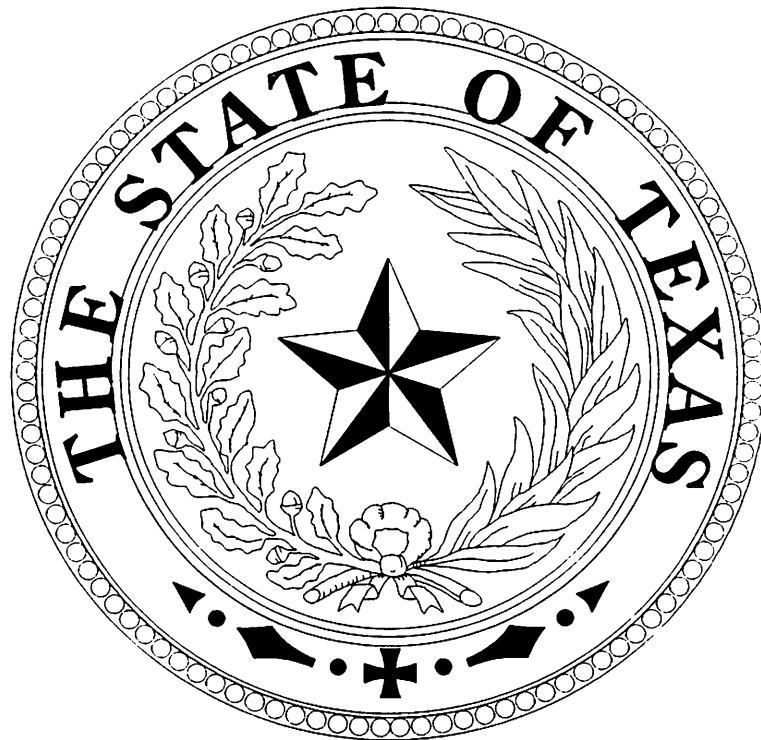


Thursday Afternoon
July 28, 2011
Essay Questions 7 - 12



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

Brandi was born in 1994 to Amber and Frank. At the time of Brandi's birth, Frank was in the United States Army. Amber and Frank never married, they never lived together, and no court order delineated Frank's rights and duties as Brandi's father. In 1997, when his military contract ended, Frank moved to reserve status in the Army. He returned home, and eventually completed his undergraduate studies and law school after interruptions by Army reactivation.

In 2009, Amber filed suit against Frank for retroactive and current child support. At the trial, Amber testified that:

- She believed Frank was intentionally underemployed;
- Frank's income during his last deployment with the Army was significantly higher than his current income and the amount of child support should be based on the higher Army income;
- Frank knew of Brandi's existence, visited her sporadically over the years, and had provided child support totaling \$25,000 since her birth; and
- Although Frank had not contributed to Brandi's support since 2003, he had claimed Brandi as a dependent during his last military deployment in order to increase his military compensation.

At the trial, Frank testified that:

- He believed retroactive child support would place an undue burden on him;
- He knew of Brandi's existence and had in the past paid \$25,000 in child support;
- His sole current income was his Army Reserve pay, which was much lower than his Army active duty pay during his last deployment; and
- He chose military reserve status in order to complete undergraduate studies and law school and take the bar exam, for which he was currently studying.

Based upon the evidence, the trial court determined that Frank should have paid a total of \$75,000 in child support since Brandi's birth. After giving Frank credit for his payment of \$25,000, the trial court ordered Frank to pay a lump sum of \$50,000 for retroactive child support.

The trial court found that Frank was intentionally underemployed and set Frank's current child support obligation based on the amount of his Army pay during his last deployment.

1. **Did the trial court abuse its discretion in ordering Frank to pay \$50,000 in retroactive child support? Explain fully.**
2. **Did the trial court abuse its discretion by finding that Frank was intentionally underemployed? 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

Jane and Carl, residents of Texas, married in 1990. Teddy, a boy, was born in 1996, during the marriage. Jane and Carl separated in 2005. In 2007, Carl filed a divorce petition, which included a request to adjudicate the parentage of Teddy.

At the trial, Carl testified that he could not be Teddy's father because he and Jane did not engage in sexual intercourse during the probable time of Teddy's conception. He also testified that he and Teddy had never bonded.

Jane introduced evidence that Carl had listed himself as Teddy's father in Teddy's birth certificate, in school records, and in Carl's tax returns. She also produced evidence that Carl had paid Jane \$12,000 in child support since the couple's separation in 2005. Carl sought reimbursement for this child support based on his claim that Teddy was not his child.

During the marriage, Carl used \$24,000 of community funds to pay off the note on a 50-acre tract of property in La Salle County that he had purchased before the marriage. Jane alleged that Carl had converted those community funds and she sought reimbursement for her one-half share of those funds.

The court found that Carl was not Teddy's father because: 1) the parties did not engage in sexual intercourse with each other during the probable time of conception; and 2) there was no bonding between Teddy and Carl.

The court also denied Jane's reimbursement claim, explaining in the divorce decree that: "The money Carl used to pay off the note on the La Salle tract was community. I award that property to him. I shall not, however, require Carl to reimburse Jane for one-half of those funds because I consider the \$12,000 that Carl previously paid in child support as an offset against Jane's claim for reimbursement. Accordingly, I will also not require Jane to reimburse Carl for the child support she has received from him."

- 1. Did the court err in finding that Carl was not Teddy's father? Explain fully.**
- 2. Did the court abuse its discretion in offsetting Jane's reimbursement claim with the child support? Explain fully.**

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

QUESTION 9

In 2006, Developer sold Lot 6 in a subdivision in Frio County, Texas, to Bea. Bea immediately recorded the warranty deed for Lot 6 in the Frio County Real Property Records. In 2007, Developer sold the adjoining Lot 7 in the same subdivision to Bea. Bea neglected at the time to record the Lot 7 warranty deed, and Developer inadvertently failed to enter the sale in Developer's records.

Bea built a house on Lot 6, but she did not enclose the lots with a fence. Her only activities on Lot 7 were planting a tree and mowing the grass.

In 2008, believing Lot 7 was still unsold, Developer sold it to Terry and gave Terry a warranty deed that purported to convey to Terry the same Lot 7. Terry borrowed the money to purchase Lot 7 from Lender. Payment of the debt to Lender was secured by a deed of trust covering Lot 7. The debt to Lender was evidenced by a promissory note to be repaid by a single payment at its maturity on March 31, 2010. Lender had no knowledge of the earlier conveyance of Lot 7 to Bea. The Lot 7 warranty deed to Terry and the deed of trust were both properly recorded in the Frio County Real Property Records.

In 2009, after following all required procedures, the Internal Revenue Service filed a notice of federal tax lien in the Frio County Real Property Records giving notice of liens due to Terry's failure to pay income tax obligations.

In January 2010, Bea recorded her warranty deed for Lot 7 in the Frio County Real Property Records.

Terry failed to pay Lender when the note matured on March 31, 2010. Lender instructed the Trustee under the deed of trust to proceed with a non-judicial foreclosure sale of Lot 7. Trustee complied with all requirements of Texas law for a proper non-judicial foreclosure sale, and Phil purchased Lot 7 at the sale on June 2, 2010. The Trustee's deed to Phil stated, "Trustee binds Terry and Terry's successor's and assigns forever to warrant and defend Lot 7 against all persons claiming Lot 7."

After purchasing Lot 7 at the foreclosure sale, Phil searched the Real Property Records and found the federal tax lien notice and the deed to Bea. Phil paid the federal tax lien to protect his interest in Lot 7. Phil, asserting that Lender breached its warranty of title, now seeks reimbursement from Lender for the amount of the federal tax lien. Bea has told Phil that she is the true owner of Lot 7.

1. **Who owns Lot 7? Explain fully.**
2. **Is Lender obligated to reimburse Phil for the payment Phil made to discharge the federal tax lien? 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

Blackacre and Redacre are adjoining 100-acre tracts of land in Brazoria County, Texas. Bob owned Blackacre, and Ron owned Redacre.

In May 2008, Bob conveyed Blackacre to Harry by a properly executed and recorded warranty deed. In the warranty deed, Bob reserved for himself “all oil, gas, and other minerals in and under and that may be produced from Blackacre.”

On June 1, 2010, Ron and Bob each entered into oil and gas leases with Oilco covering Redacre and Blackacre, respectively. Both leases contained the following provisions:

- The stated term of each lease was "one year from June 1, 2010 and as long thereafter as oil and gas, or either of them, is produced in paying quantities from the leased tract."
- Oilco had the right, at its option, to pool all or part of the leased acreage with other land in the immediate vicinity, if necessary or advisable to properly develop the leased acreage.
- In order to form a pooled unit, Oilco was required to sign and record in the Brazoria County Real Property Records an instrument identifying and describing the pooled acreage.
- Under the pooling clauses, production on pooled acreage would be treated as if it was from the leased acreage, whether or not the well was located on the leased acreage.

In addition, Bob’s Blackacre lease granted Oilco the right to conduct seismic or geophysical operations on Blackacre.

Also, Ron’s Redacre lease stated that the lease would remain in force only as to those lands within the pooled units upon which production was already occurring at the end of the primary term.

On August 2, 2010, Oilco formed a unit by pooling the north half of Redacre and the north half of Blackacre and identified the unit in an instrument recorded as required in the leases. Oilco promptly drilled an oil well on the pooled portion of Redacre, and the well began to produce in paying quantities in September 2010.

In January 2011, Oilco entered the south part of Blackacre and began seismic operations. Harry objected because he did not want strangers on his land conducting such operations.

On July 1, 2011, Oilco filed an instrument identifying the south halves of Redacre and Blackacre as a pooled unit. Ron objected.

1. **Is Oilco entitled to form a pooled unit that includes the south part of Redacre? Explain fully.**
2. **May Oilco conduct seismic operations on Blackacre in spite of Harry's objections? 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

In January 2011, Jean, Frank, and Mary, formed JFM Company (“JFM”) and began operating a dry cleaning business in Sweetwater, Texas, under the name “Sweetwater Cleaners.” Jean, Frank, and Mary formed JFM as a general partnership under Texas law, but did not enter into a written partnership agreement.

Frank died unexpectedly in April 2011. He was married to Susan at the time of his death. Susan is Frank’s only heir and was recently appointed executor of Frank’s estate. The day after her appointment as executor, Susan demanded that she be allowed to inspect Sweetwater Cleaners’ financial records and participate in JFM as a partner in the management of the company.

In May 2011, a month after Frank died, Mary signed a lease for a building located less than a block from Sweetwater Cleaners. Mary put a sign in the window of the leased building: “Coming Soon ... Rolling Plains Dry Cleaners.” Mary intended to operate Rolling Plains Dry Cleaners independently from Sweetwater Cleaners.

Jean does not want to allow Susan to inspect Sweetwater Cleaners’ records or participate in management of the company. Jean also wants to prevent Mary from opening a competing business. Jean, on her own behalf and on behalf of JFM, has sued Susan and Mary. Jean is seeking: (1) a declaratory judgment that Susan is not entitled to inspect JFM’s financial records and participate in the management of JFM; and (2) an injunction against Mary’s opening a competing business.

- 1. What is Susan’s legal status with respect to JFM? Explain fully.**
- 2. Are JFM and Jean likely to prevail in the suit for a declaratory judgment? Explain fully.**
- 3. What duties, if any, does Mary owe to JFM and the other partners? Explain fully.**
- 4. Are JFM and Jean entitled to the injunction they seek? 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

In 2009, Anne and Dan wanted to form a Texas corporation called Modern Restorations, Inc. to purchase, remodel, and re-sell commercial buildings. They agreed that the corporation, once formed, would operate until December 31, 2015, at which time it would cease doing business and dissolve.

Anne and Dan intended to have a seven-person Board of Directors. They agreed the bylaws would require that the seven people be elected by the shareholders and that the Board of Directors would manage the corporation. Anne and Dan then formed the corporation as planned.

The Board of Directors currently consists of Anne, Dan, and five others, all of whom were duly elected at the last annual meeting of the shareholders. Last month, Anne, who is chairman of the Board, sent an e-mail to the other six Board members informing them of the date, time, and place of a special meeting. Anne did not disclose the purpose of the meeting in the e-mail.

When Anne called the meeting to order, there were four members of the Board of Directors present: Anne, Dan, Fran, and Stan. Stan informed Anne that the meeting was “illegal” because he had not consented to be notified by e-mail and insisted that the meeting not proceed. Anne ignored Stan and proceeded to conduct business. Stan stayed in the meeting while several items of business were conducted but, when Anne called for a vote on whether the corporation should purchase a specific building for renovation and resale, Stan stormed out of the meeting without voting. Anne, Dan, and Fran voted in favor of the purchase.

- 1. Regarding Anne and Dan forming the corporation: (a) what document must Anne and Dan have prepared and filed in order to properly form the corporation; (b) with whom were they required to have filed the document; (c) what information were they required to include in the document; and (d) what would be the legal effect of filing the document? Explain fully.**

- 2. Regarding the meeting: (a) did Anne provide a proper notice of the meeting; (b) was the vote to purchase the building effective as an act of the corporation; and (c) what must Stan do if he wants his dissent to be recorded in the minutes of the meeting? Explain fully.**

This concludes the Texas Essay portion of the exam.

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