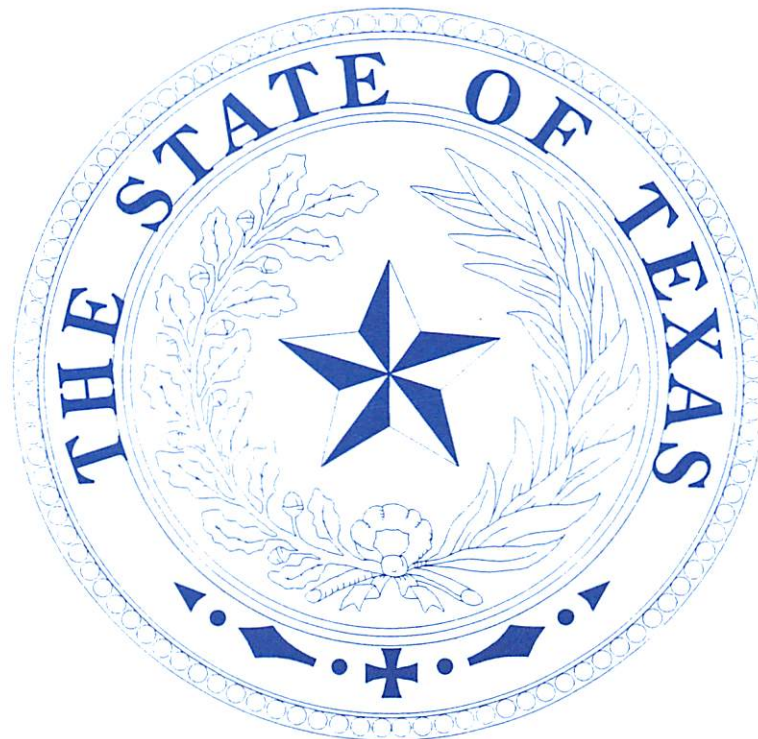


Thursday Morning
July 26, 2012
Essay Questions 1 - 6



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

In January, Art, Bill, and Chris agreed to start a for-profit hardware store in Texas called ABC Hardware Ltd. ("ABC"). They did not file any documents with the Texas Secretary of State, but did sign a written agreement that stated, in its entirety, as follows:

We hereby agree to jointly own and operate ABC Hardware Ltd. We will share the profits equally, but only after our initial investments have been paid back. We will not be personally liable to third parties for any obligation of the business.

After signing the agreement, Art and Bill each deposited \$25,000 into ABC's bank account at First Bank. As his investment, which was valued by the parties at \$25,000, Chris conveyed to ABC full title to a warehouse he owned. The warehouse was to be used in ABC's business. Art worked in the store and was principally responsible for running the business, but he consulted with Bill and Chris on major decisions.

In March, while driving an ABC delivery truck to deliver an order to a customer, an ABC employee ran a red light and collided with Motorist. Motorist sued ABC, Art, Bill and Chris for personal injury and property damage.

In June, Bill obtained a \$50,000 loan from First Bank by executing a promissory note naming ABC as borrower and First Bank as lender. He deposited the proceeds of the loan into his personal bank account and used them to purchase a new personal vehicle. Art and Chris knew nothing about the loan or Bill's use of the loan proceeds. Bill made regular payments to First Bank on the loan from his personal funds.

In August, Chris negotiated a deal with Investor to sell the warehouse to Investor for \$110,000. Chris then contacted Art and Bill and offered to purchase the warehouse from ABC for \$50,000, but did not disclose his negotiations with Investor. Art and Bill agreed, and Chris paid \$50,000 to ABC in exchange for title to the warehouse. The next day, he sold the warehouse to Investor for \$110,000.

By the end of the year, ABC had generated a \$150,000 net profit, which included the profit realized on the sale of the warehouse to Chris. No prior distributions had been made to anyone. In preparing to meet with Bill and Chris to discuss distribution of ABC's profits, Art learned of Bill's dealings with First Bank, and of Chris's transaction with Investor. Art immediately demanded an accounting from both Bill and Chris, and refused to agree to distribute any ABC profits until he received an accounting from both. By then, Bill had paid the balance of the First Bank loan down to \$25,000.

- 1. What form of business organization is ABC Hardware Ltd.? Explain fully.**
- 2. To what extent, if any, are Art, Bill, and Chris personally liable to Motorist? Explain fully.**
- 3. In an equitable action for an accounting: (a) how should the First Bank loan taken out by Bill and the profit taken by Chris on the sale of the warehouse be treated; (b) what is the resulting amount available for distribution; and (c) how should the distribution be allotted among Art, Bill, and Chris? 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

Housing Corp. (“HC”), a Texas corporation, was formed in 2008. HC’s certificate of formation stated that its purpose was “to construct and sell single family residences and no other purpose.” George purchased shares in HC during its initial public offering in 2008.

In June 2010, HC’s board of directors duly and properly called a directors’ meeting to discuss and vote on whether HC would enter into an agreement with Nursing Homes, Inc. (“NHI”) to finance the construction of a chain of Texas-based nursing homes. George and several other non-director HC shareholders attended the meeting and voiced their objection to HC’s participation in the nursing home venture. Over the shareholders’ objections, HC’s board voted unanimously to invest in the nursing home venture.

Intending to challenge the decision of the HC board of directors, George consulted an attorney for advice on what action was available to him. On July 15, 2010, George fell ill and died.

On August 1, 2010, HC signed a joint venture agreement with NHI and wired its \$1 million investment to NHI’s bank account. The nursing home venture ultimately proved unsuccessful and HC’s entire investment was lost.

Tim, who was George’s nephew and sole heir, inherited George’s HC shares of stock and became a shareholder of record in January 2011. Knowing that his Uncle George had opposed the NHI joint venture, Tim now wishes to vindicate his uncle’s opposition.

1. **What action, if any, could George have taken before his death to prevent HC from entering into the agreement with NHI? Explain fully.**
2. **What form of action, if any, is available to Tim, and what are the conditions precedent to the commencement and prosecution of such an action? 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

Peter searched online for a wedding gift for his son, George, and found a website for a local business called Discount Appliances (“Discount”). The website contained photos of washers and dryers for sale and included the following statements on the homepage: “All merchandise in LIKE NEW condition” and “Customer Satisfaction Guaranteed!” The prices of the washers and dryers were listed next to the photos and were substantially less than the prices of new washers and dryers.

Peter called the telephone number listed on the website and spoke with Roger, a Discount representative. Roger explained that the washers and dryers were “practically brand new,” had “never been used,” and had “only minor cosmetic scratches and dents.” Roger also told Peter not to worry about purchasing online because the washers and dryers were subject to an “absolute 30-day Money Back Guarantee.”

After speaking with Roger, Peter went back online to the Discount website and selected a washer and dryer to buy for George. Peter filled out the online order form by typing in his name and address as the purchaser, and indicated that the appliances were to be delivered directly to George’s address.

At the bottom of the online order form, in small type, was the following statement: “Merchandise sold AS IS—No warranties. Purchaser waives all claims and assumes all risks and liabilities.”

Discount delivered the washer and dryer to George’s home. The first time George used the washer, it leaked water and caused serious damage to George’s wood floor.

George immediately called an appliance repair shop and a service specialist was sent to look at the washer. After inspecting the appliances, the service specialist informed George that both the washer and dryer showed signs of heavy use. In particular, the washer had worn hoses and a rusted and cracked tub that was the clear cause of the water leak.

George called Peter and told him what happened. Peter called Roger and explained the situation. Roger told Peter that there was nothing Discount could do because of the written statement at the bottom of the online order form. When Peter reminded Roger about their prior telephone conversation, Roger said that he was just expressing his opinion. When Peter asked about the “30-Day Money Back Guarantee,” Roger admitted that, “Yeah, we always say that, but we don’t really have a guarantee since our prices are so low.” Peter followed up by sending a letter to Discount demanding a refund.

As a result of the damage caused by the leak, George had to completely replace the floor in his house and missed two weeks of work overseeing the repairs.

- 1. What claims under the Texas Deceptive Trade Practices Act (“DTPA”), if any, can Peter make against Discount and Roger? Explain fully.**
- 2. What claims under the DTPA, if any, can George make against Discount and Roger? Explain fully.**
- 3. Under the DTPA, what elements of damages, if any, can Peter recover against Discount? Explain fully.**
- 4. Under the DTPA, what elements of damages, if any, can George recover against Discount? 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

After hearing that the city of Verde, Texas, intended to create a downtown park called Green Park, Sam, a well-known environmental advocate, established the Green Park Trust (“GPT”). The pertinent trust documents specifically provided that the purpose of GPT was “to support the beautification of the city of Verde and the preservation of nature” and “to provide funding for the construction, upgrade, and maintenance of Green Park forever.”

Sam named his good friend, Ron, a local business developer, as GPT’s trustee. Because of his friendship with Ron, Sam included the following statement in the trust document: “Trustee is hereby relieved of any liability for any action taken in his capacity as trustee.” Green Park was constructed and maintained with funding from GPT.

Sam died in 2009. In 2011, the city of Verde negotiated a deal to sell Green Park to Private Development, Inc. (“PDI”), a private developer, which announced its intention to construct a large shopping center over the entire area comprising Green Park. Ron is the majority owner of PDI.

In his capacity as trustee of GPT, Ron sent a letter to PDI, with a copy to the Texas Attorney General, stating:

Inasmuch as Green Park will continue its existence as a shopping center, I hereby designate Private Development, Inc. as the replacement beneficiary, and Green Park Trust will provide funding to assist in the construction of the shopping center and for the ongoing upkeep of a statue to be erected in Sam’s honor in recognition of Sam’s community service.

Before Ron distributed any trust funds to PDI, the Attorney General of Texas, acting as the representative of the city of Verde, filed a civil action (a) challenging the designation of PDI as a replacement beneficiary and (b) seeking to remove Ron as trustee. PDI intervened on behalf of itself, as replacement beneficiary, claiming it is a necessary party to the action.

1. **What standing, if any, do the following parties have under the Texas Trust Code to proceed in the lawsuit:**
 - a. **PDI?**
 - b. **the Attorney General?**

Explain fully.

2. **Assume the Attorney General has standing. Considering the benevolent, public purpose of GPT and the Texas Trust Code, how should the Court rule on each provision of the Attorney General’s action? 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

In September 2011, Albert's trusted business manager of many years, Jane, finalized her divorce and moved from Austin to Port Aransas, Texas. Unbeknownst to Albert, Jane took Albert's business checkbook when she left town. Albert's business checkbook had been entrusted to Jane and she had, for many years, written checks that Albert signed to pay Albert's business expenses.

Upon arriving in Port Aransas, Jane could not find a job, and soon ran out of money. On October 15, 2011, finding herself without funds, Jane wrote a check for \$800 payable to herself on Albert's business account at Local Bank, forging Albert's signature on the check. Jane cashed the check at Port-A Bank, and the check was subsequently paid by Local Bank and charged against Albert's account. The forgery would have been obvious had Local Bank compared the signature on the check with the signature on the signature card Albert had previously provided to Local Bank. Local Bank, however, did not compare the signatures because, in keeping with industry standards, it did not compare signatures on checks for less than \$1,000.

Albert received his regular bank statement from Local Bank on November 4, 2011, which he did not get around to reviewing until December 5, 2011. At that time, he discovered the \$800 forged check written on October 15, 2011. Albert went to Local Bank that day (December 5, 2011), reported the forgery, and demanded that Local Bank credit his account \$800 for the forged check.

In January 2012, Albert contracted with Danny to pay Danny \$2,000 to network all of the computers at Albert's office. Danny agreed to accept two promissory notes from Albert in payment for his services. Albert properly executed and delivered to Danny two notes each payable to Danny: one for \$1,500 due on July 1, 2012; the other for \$500 due on July 15, 2012. Within a few days, Albert discovered that Danny had not done anything to network Albert's computers and, in fact, was incapable of performing the contract. Albert called Danny and demanded the return of both promissory notes.

Later that same day, however, Danny indorsed the \$1,500 note by signing it on the back, and delivered it to Supplier. Supplier accepted the note in satisfaction of a long-standing \$2,500 debt Danny owed Supplier. Also on that day, Danny indorsed the \$500 note and gave it to his nephew, Ned, as a birthday gift. Neither Supplier nor Ned had any knowledge of the dispute between Albert and Danny.

On the due dates of the respective notes, Supplier and Ned presented them to Albert and demanded payment. Albert, citing Danny's utter inability to perform the networking contract, refused to pay both Supplier and Ned.

1. **What defenses, if any, might Local Bank assert against Albert's demand to credit his account for the October 15, 2011 check for \$800? Explain fully.**
2. **What liability, if any, does Albert have to Supplier for the \$1,500 promissory note? Explain fully.**
3. **What liability, if any, does Albert have to Ned for the \$500 promissory note? 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

In March 2011, Edward commenced doing business as a sole proprietor using the trade name CopyCo. CopyCo entered into the following transactions and the following events occurred:

- On April 1, 2011, Printers, Inc. (“Printers”) sold and delivered to CopyCo a high-speed copier. Printers sold the copier to CopyCo on credit. Although Edward agreed to sign and return a security agreement granting Printers a security interest in the copier, Edward failed to do so.
- On May 1, 2011, CopyCo obtained a \$20,000 short-term loan from Bank to use for its operations, and Edward signed a promissory note evidencing the loan. The note was to be paid on or before October 31, 2011. As collateral for the loan, Edward signed a security agreement giving Bank a security interest in all of CopyCo’s currently owned and after-acquired furniture, equipment, inventory, and accounts receivable. On May 2, 2011, Bank filed financing statements in all required public offices.
- On June 1, 2011, Technology Ltd. (“Technology”) sold and delivered to CopyCo five computers. Edward, on behalf of CopyCo, signed a promissory note and security agreement granting Technology a security interest in the five computers and in CopyCo’s accounts receivable. On June 10, 2011, Technology filed financing statements in all required public offices.
- On November 1, 2011, Bank’s president met with Edward to discuss the fact that CopyCo was in default on its agreement to repay the loan. The next day, CopyCo delivered certificates for 50 shares of Widget Inc. stock to Bank, as additional collateral for the loan. In return, the bank agreed to extend the promissory note’s due date.
- On November 10, 2011, Furniture Inc. (“Furniture”) sold five freestanding workstations to CopyCo on credit. That same day, Edward signed a note and security agreement granting Furniture a security interest in the workstations. Furniture delivered the workstations to CopyCo on November 28, 2011.
- On December 10, 2011, CopyCo filed bankruptcy and Steve was appointed as the Chapter 7 Trustee of the Bankruptcy Estate of CopyCo.
- On December 15, 2011, after learning that CopyCo had filed bankruptcy, Furniture filed financing statements in all required public offices.

As among Printers, Bank, Furniture, Technology, and Steve, who holds the superior interests in the following items of collateral:

1. **The copier? Explain fully.**
2. **The computers? Explain fully.**
3. **The workstations? Explain fully.**
4. **The accounts receivable? Explain fully.**
5. **The Widget Inc. stock? Explain fully.**

This concludes the morning portion of the Texas Essay exam.