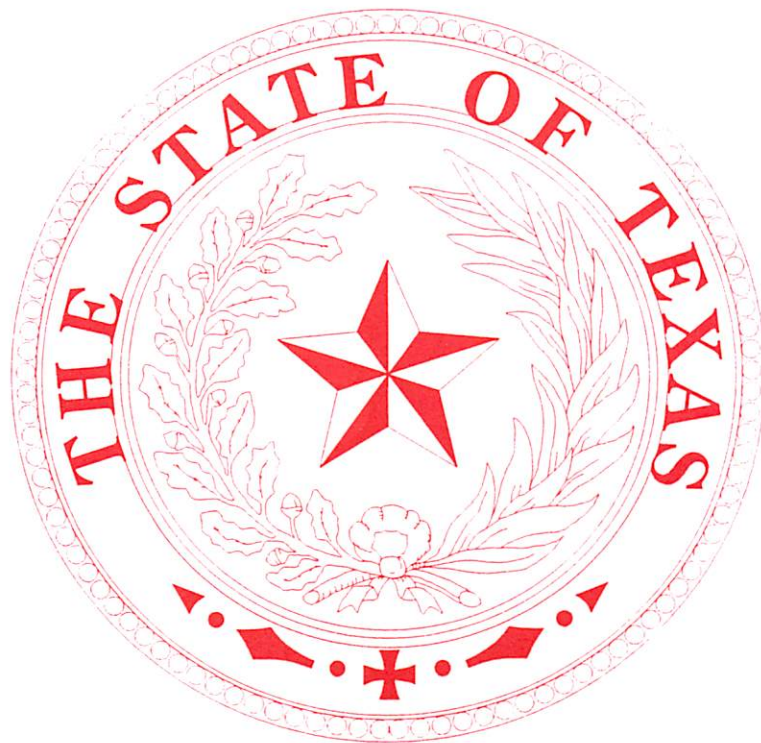


Thursday Afternoon
July 26, 2012
Essay Questions 7 - 12



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

Barbara and Jack married in 2003 and lived in Austin, Texas. They had one child during the marriage. The couple separated in 2008 and Barbara filed a petition for divorce in 2010. The following evidence was presented at trial:

- Barbara testified that, at the time of their separation, Jack was employed as a plastic surgeon and was earning a net income of \$21,000 per month. She introduced the couple's income tax returns for the years 2003 through 2008 as proof of Jack's income;
- Jack testified that he was currently employed as a part-time doctor at an emergency clinic at a net income of \$9,000 per month, that the couple's separation had caused him to become depressed, and he no longer felt capable of handling the stress of working as a plastic surgeon; and,
- Proof that in 2004, Barbara had used her separate property to buy a ranch in Kerr County and had included Jack's name on the title. Barbara testified that she did not intend to gift any interest in the ranch to Jack. She also introduced into evidence the 2010 deposition testimony of a family friend who stated that, after Barbara and Jack separated in 2008, Barbara told her that the entire Kerr County ranch was Barbara's separate property and that, in the event of a divorce, Jack had no right of ownership in the ranch.

The Court ruled that Jack was intentionally underemployed and ordered him to pay \$5,000 per month in child support. The Court issued no specific findings of fact with the child support order. The Court also ruled that Barbara and Jack were each entitled to an undivided 1/2 interest in the ranch as their separate property.

1. **Did the Court err in ruling that Jack was intentionally underemployed? Explain fully.**
2. **Did the Court err in ordering Jack to pay \$5,000 per month in child support? Explain fully.**
3. **Did the Court err in ruling that the Kerr County ranch was separate property? 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

Justin Smith and Tiffany Brown, both residents of Texas, met in 2000. In 2002 they rented a house in San Antonio and moved in together. They never obtained a marriage license and never married ceremonially. In 2008, Tiffany was involved in a serious accident when the driver of a delivery truck hit her car head on. Tiffany sustained life-threatening injuries that required several surgeries and an extended hospitalization. Tiffany's injuries left her permanently disabled and eventually ended her career as a public relations director for a large company. The couple's relationship became increasingly unhappy and Justin moved out of the house in June 2009.

In January 2010, Tiffany filed a personal injury lawsuit against the company that employed the truck driver involved in her accident. In August 2010, she settled all of her claims against the company for \$800,000. The settlement agreement stated that the settlement funds were being paid "to compensate Tiffany" for her pain and suffering, mental anguish, medical expenses and loss of earning capacity, but did not specify any dollar amount being paid for each.

In January 2011, Justin filed a petition for divorce. At trial, the following unrebutted evidence, including testimony from several of the couple's friends, was presented: (1) after Justin and Tiffany moved in together, they both stated they intended to have a church wedding as soon as Justin started earning enough money; (2) they always introduced each other as husband and wife; and (3) Tiffany usually signed documents with the name "Tiffany Smith," including checks written on the joint checking account Justin and Tiffany maintained. Justin's attorney also introduced the agreement evidencing the \$800,000 settlement and argued that the settlement funds should be classified as community property. Tiffany's attorney argued that, inasmuch as the settlement agreement stated unequivocally that the settlement was "to compensate Tiffany," it should be classified as her separate property.

The Court ruled that Justin and Tiffany were a married couple and that the settlement funds were entirely community property.

1. **Did the Court err in ruling that Justin and Tiffany were a married couple? Explain fully.**
2. **Did the Court err in ruling that the settlement funds were entirely community property? 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

Rob, a 36-year-old single man, owned in fee simple an unencumbered 500-acre tract of land in Texas that had been owned by his family since before Texas became part of the United States of America. The 500-acre tract was within the extraterritorial jurisdiction of City (a recognized municipality), was served by a volunteer fire department, and had access to City's electric services, but no other utilities.

Allyson agreed to purchase 300 acres out of the 500-acre tract. She demanded that Rob convey the 300 acres to her by a valid deed of the highest quality. Immediately after the sale to Allyson, Rob claimed a homestead exemption for the remaining 200 acres.

After recording the deed from Rob, Allyson sold 50 acres out of her 300 acres to her sister, Emily. The deed from Allyson to Emily was signed by Allyson and adequately described the 50 acres, but it was not acknowledged by a notary public or otherwise witnessed.

Shortly after Allyson's sale of the 50-acre tract to Emily, Emily validly established her homestead on the 50-acre tract. She then applied to ABC Bank for a line-of-credit loan to finance daily operations of her business and pledged the 50-acre tract as collateral for the loan. She later defaulted on the loan, and ABC Bank sought to enforce its lien on the 50-acre tract.

1. **What is the highest quality of deed Rob could use under the circumstances to convey the 300-acre tract to Allyson? Explain fully.**
2. **Is the homestead exemption Rob claimed in the remaining 200 acres valid? Explain fully.**
3. **Was the deed Emily received from Allyson valid to convey the 50 acres to Emily and was it recordable? Explain fully.**
4. **Did ABC Bank have an enforceable lien on Emily's 50-acre homestead tract? 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

Sean owned a 2,000-acre tract of land in Atascosa County, Texas (the “Land”), and he also owned all of the mineral interests in the Land. On December 1, 2006, Sean entered into a valid lease of all mineral interests in the north 1,000 acres of the Land with Productions Co. for oil and gas production. The lease contained the following terms:

- a 1/16 royalty interest;
- a “bonus” payment of \$1,500 per acre;
- delay rentals of \$750 per acre to be paid on the anniversary of the lease for any period during which no production operations have commenced; and
- a term of five years and for so long thereafter as oil and/or gas is produced on the Land.

Productions Co. began drilling operations on the Land on December 30, 2007 and completed three wells from mid-2008 through mid-2010, which have produced gas continuously in paying quantities since then. Productions Co. did no further drilling thereafter.

On December 1, 2010, the fourth anniversary of the lease to Productions Co., Sean sold all 2,000 acres of the Land to Riley. The deed from Sean to Riley explicitly reserved all mineral interests in the Land to Sean.

Riley, a wind farm proponent, believed that the lease to Productions Co. on the north 1,000 acres would expire at the end of the fifth year (November 30, 2011) and that thereafter he would be able to pursue his wind farm ambitions free of any interference from mineral production activities.

Productions Co.’s completed wells were still producing when on November 15, 2011, Productions Co. announced its intention to begin drilling a new well in January 2012 on the north 1,000 acres. Riley objected strenuously, asserting that Productions Co. had no right to engage in drilling after the end of the primary term of the lease. He also demanded that Productions Co. remove all its equipment and abandon the wells at the end of the primary term of the lease.

In March 2012, Sean entered into a new written 5-year oil and gas lease with Productions Co. on the south 1,000 acres of the Land over Riley’s strenuous objection. Riley claimed that, inasmuch as a lease did not exist on the south 1,000 acres prior to the time he purchased the Land, Sean had no continuing right to enter into the new lease.

1. **At any time under the lease for the north 1,000 acres, was Sean entitled to receive any delay rentals or bonus payments from Productions Co.? Explain fully.**
2. **At what point in time, if at all, did Sean’s right to begin receiving royalty payments arise and for how long do such rights continue? Explain fully.**
3. **Could Riley have prevented Productions Co. from drilling the new well in January 2012 and required it to remove its equipment and abandon all wells at the end of November 2011? Explain fully.**
4. **Could Riley have successfully challenged Sean’s March 2012 lease to Productions Co.? 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

Tom and Ann, lifelong residents of Waco, Texas, met in 1990. Ann was a widow with three young children, Gail, Libby, and Pete. Tom and Ann married in 1991.

Tom was the sole income earner of the family. Ann never worked outside the home. Tom supported Ann's three children until they reached the age of 18. During their marriage, Tom and Ann bought and paid off a house, which they paid for from Tom's earnings. They maintained joint checking and joint savings accounts, neither of which had rights of survivorship or a payable-on-death beneficiary, and Tom had a 401(k) retirement account funded with his earnings.

Ann had inherited china, silver, and antique furniture from her mother, who died after Ann's marriage to Tom. Ann had used these items to furnish their home.

In 2011, Ann died without a will. She was survived by Tom, Gail, Libby, and Pete. Tom believes that, inasmuch as he had been the sole income earner during the entire marriage, he is entitled to inherit all the property free of any participation by any of Ann's children. At the very least, he believes he should have the right to keep and use the real property and the china, silver, and furniture during his lifetime.

Gail, Libby, and Pete, with whom Tom's relationship is strained, claim they are entitled to inherit all of Ann's estate. They also claim that Tom is personally liable for Ann's funeral and burial expenses.

1. **What interests, if any, does Ann's estate have in the following items of property, and to whom and in what proportions should they be distributed:**
 - (a) The home in Waco?
 - (b) The checking and savings accounts?
 - (c) The china, silver, and furniture?
 - (d) The 401(k) retirement account?**Explain fully.**
2. **What rights, if any, does Tom have to keep and use the real property and the china, silver, and furniture during his lifetime? Explain fully.**
3. **Is Tom personally liable for Ann's funeral and burial expenses? 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

John and Marie, lifelong residents of McLennan County, Texas, married in 1952. John had a child, Robert, from a prior marriage. John and Marie had three children from their marriage, Tom, Nick, and Grace. John and Marie raised their three children and Robert, although Marie never adopted Robert.

In 1965, unbeknownst to Marie, John executed his first and only will. It was in all respects validly executed, but was not self-proved. The two witnesses to the will were John's lawyer, who drafted the will, and the lawyer's secretary, both of whom still reside in McLennan County.

The provision in the will appointing an executor stated, "To serve as Executor of this will and my estate, I appoint my spouse." The will contained no other provisions concerning the administration of the estate.

The dispositive provision of John's will stated, "I give, devise, and bequeath all of my property, of whatsoever nature, and wheresoever situated, to my spouse, or if she does not survive me, to my children."

John died on Christmas Day 2008 survived by Marie and the four children. On his deathbed, John told Marie about the 1965 will and said, "In that will, I have left everything to you." John's attorney was able to find John's file and provide Marie with a photocopy of the will. But, despite a diligent search, the original will is never found. The file contains no information regarding what happened to the original will.

At the time of John's death, his property was community property, consisting of the family home, which John and Marie had purchased in 1954, and a joint checking account with rights of survivorship in the names of John and Marie. All debts and final expenses were paid shortly after John's death.

Marie has found a buyer for the home at a very good price and wishes to sell it. The children, however, oppose the sale. Neither the buyer nor the title company is willing to proceed unless she can establish that she has clear title to the property.

1. **Without a probate proceeding, can Marie produce clear title to the house in her sole name? Explain fully.**
2. **What proof must Marie produce in order to admit John's will to probate, and is it likely that she will succeed? Explain fully.**
3. **What steps would be required for the administration of John's estate in each of the three available forms of administration, and which would be the easiest and most advantageous for Marie? Explain fully.**

This concludes the Texas Essay portion of the exam.

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