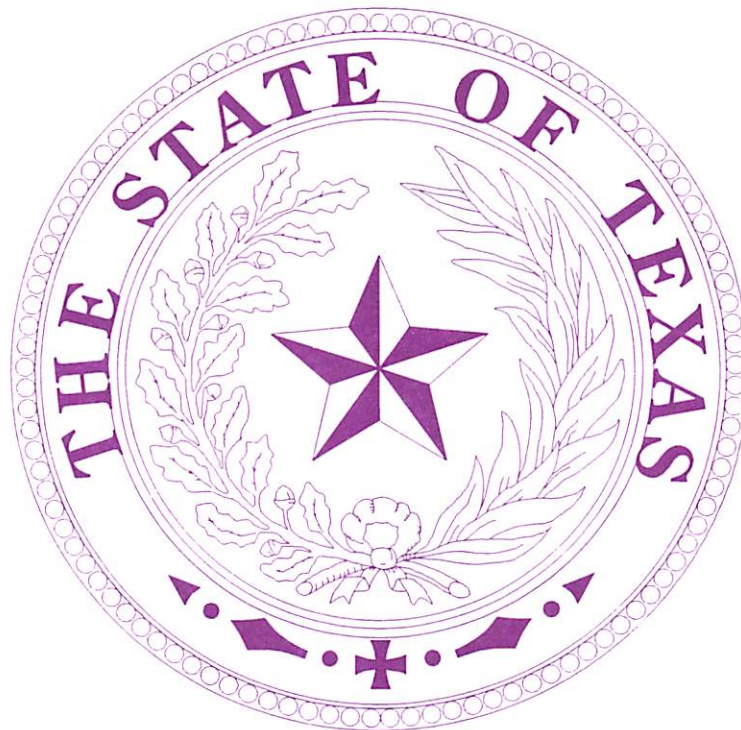


Thursday Afternoon
February 28, 2013
Essay Questions 7 - 12



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

In 2008, former professional baseball players Albert, Barry and Carlos legally and properly formed a Texas limited partnership called Baseball Training, L.P. (“BBT”) to operate a baseball training academy. Albert was the general partner. Barry and Carlos were limited partners. Although Barry and Carlos were not involved in the day-to-day operation of BBT’s business, they did serve as hitting instructors for BBT and were paid a salary for doing so.

In 2010, Albert engaged Field of Dreams, Inc. (“FOD”) to construct a new baseball training field on BBT’s property. He signed the contract “Baseball Training, L.P. by Albert, its sole general partner.” Although Barry and Carlos did not participate in the contract negotiations with FOD, they were present at FOD’s offices when Albert signed the contract and were introduced to FOD’s representatives as BBT’s “silent” partners. FOD fully performed under the contract, but BBT did not pay all amounts due to FOD under the contract. FOD sued BBT, Albert, Barry and Carlos for the balance due under the contract.

In 2011, BBT took all legally required actions to become a manager-managed limited liability company under Texas law, and changed its name to Elite Baseball Training, L.L.C. (“EBT”). Albert was appointed manager of EBT. EBT’s company agreement identified Albert, Barry and Carlos as EBT’s members and provided that EBT fully assumed ownership of all assets, debts and liabilities of the former BBT. Barry and Carlos continued as employees of EBT, serving as hitting instructors just as they had for BBT. Upon learning of EBT’s creation, FOD amended its pleadings to add EBT as a defendant.

In 2012, twelve-year old Lance was seriously injured after being hit in the head by an errant pitch while receiving hitting instruction at EBT’s training facility. Barry and Carlos were the EBT instructors on duty at the time and were both actively involved in the training session with Lance. Lance’s head injury occurred because Barry and Carlos allowed Lance to bat without wearing a protective helmet. This was contrary to EBT’s written policy, which had been drafted in 2008 by Albert (while he was general partner of the former BBT) and formally adopted by EBT in 2011. On Lance’s behalf, Lance’s parents sued EBT, Albert, Barry and Carlos for negligence. Barry and Carlos admitted in depositions taken in the lawsuit that Albert had previously instructed them and EBT’s other hitting instructors that no one was to be permitted to bat without a helmet.

- 1. In FOD’s lawsuit, can each of the defendants be held liable for the balance due under the contract? Explain fully.**
- 2. In Lance’s parents’ lawsuit, can each of the defendants be held liable for Lance’s personal injuries? 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

Bernard and Beulah inherited a 10,000-acre Texas ranch that included cattle and a vacant, dilapidated building that once served as a slaughterhouse. Bernard and Beulah want to restore the slaughterhouse and operate a business of raising and slaughtering cattle for profit. They want to form an entity named “B&B Meats” to operate the business and are trying to decide whether to form a corporation, a general partnership, a limited liability partnership, or a limited liability company.

Their objectives are to form an entity with the best combination of the following factors: (i) ease of formation; (ii) limitation, to the extent possible, of personal liability for debts or other financial obligations of the business; (iii) favorable federal tax treatment; and (iv) flexibility in management of the business.

- 1. Which form of entity would you recommend for them? Explain fully, comparing the advantages and disadvantages of each.**

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

QUESTION 9

Kay and Marty married in 1980 and live in Laredo, Webb County, Texas. In 2011, Kay filed a petition for divorce from Marty, in Webb County, Texas. At trial, the following evidence was presented to the court:

- During the entire marriage, the couple lived in a home that Kay purchased 5 years before she married Marty. Kay financed the purchase of the home with a 15-year mortgage and the couple made the mortgage payments on the home from their joint checking account after they were married.
- In 1990, Kay and Marty built an addition to the home at a cost of \$75,000.
- In 2005, Marty - against Kay's wishes - paid \$100,000 in cash to purchase real property at a nearby lake and took title to the property solely in his name. Marty produced evidence showing that the \$100,000 price consisted of \$50,000 cash he inherited from his father and the other \$50,000 was paid exclusively from income he earned working as an investment banker.
- Kay's uncle passed away in 2008, leaving Kay \$200,000 worth of stocks in his will. In the last 5 years, the stocks paid cash dividends totaling \$15,000, which Kay kept in a separate savings account.

How should the court decide the separate property and community property interests of Kay and Marty in the following property:

1. **The home (including the issues relating to the post-marriage mortgage payments and the 1990 addition to the home)? Answer and explain fully.**
2. **The lake property? Answer and explain fully.**
3. **The stock? Answer and explain fully.**
4. **The cash dividends kept in the savings account? Answer and 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

Jerry, who is a successful lawyer living in New York, has been served with a paternity suit in Bexar County, Texas. The suit alleges that Jerry fathered a child, Mary, who was born a few months after Jerry finished a two-year deployment at a military base in San Antonio in 1992. Mary's mother was killed in a car accident last year and the paternity suit was filed by Mary's grandparents, who are her legal guardians.

Mary was born with severe brain damage and is physically and mentally incapacitated. Jerry admits he had intercourse with Mary's mother while stationed in Texas, but he was never told about the pregnancy or about Mary's birth. Jerry does not believe in the reliability of genetic testing, does not want to submit to it, and wants to rebut any evidence regarding genetic testing results.

Jerry consults with Beth, a lawyer in San Antonio, and asks her the following questions:

1. **Does the court in Bexar County have personal jurisdiction over Jerry? Answer and explain fully.**
2. **Do Mary's grandparents have standing to bring a paternity suit against Jerry? Answer and explain fully.**
3. **Can the court order Jerry to submit to genetic testing, and what are the consequences if he refuses? Answer and explain fully.**
4. **How would Jerry rebut any genetic testing evidence presented by Mary's grandparents? Answer and explain fully.**
5. **If paternity is established, what duty, if any, would Jerry have to support Mary now that she is an adult? Answer and 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

Carolina works as a computer programmer in a small three-person company in Austin. As a result of a sudden illness, Carolina required an extensive stay in the hospital and incurred significant medical bills. Carolina was unable to work for several months and not able to immediately pay the medical bills from her hospitalization.

After returning to work, Carolina began receiving statements in the mail at her home from City Hospital (“Hospital”), requesting immediate payment of the unpaid medical bills. Unable to make any payments, Carolina ignored the statements. Then, she began to receive messages on her home voicemail from Dan, who was employed in Hospital’s accounting department. Dan’s messages stated he was calling from the “Credit Bureau” regarding collection of the unpaid medical bills. The calls became more frequent and would occur early in the morning, before 6 a.m., and late at night, after 11 p.m.

Carolina finally called Dan back and explained that she was not able to pay the bills at this time. Dan told her that unless the bills were immediately paid in full, the Credit Bureau was going to sue her for the unpaid bills in court, file criminal charges against her, and have her arrested and “thrown in jail for a very long time.” Dan also told Carolina that she was the “type of deadbeat” that was the cause of the high cost of healthcare and that, if payment was not received in full within a week, she could expect a police officer to come to her home. After Carolina hung up the phone, she received an email from Dan stating that she would end up in “debtor’s prison” if she didn’t take care of the unpaid bills immediately.

The telephone conversation and email with Dan upset Carolina so much that she developed a debilitating migraine headache and did not go into work the next day. Instead, Carolina went in to see her doctor, who diagnosed her with a severe migraine headache caused by stress, prescribed her pain medication, and ordered her to remain out of work for three days.

The next day, Dan called Carolina’s office and asked to speak to her “supervisor.” Ellen, who was Carolina’s supervisor and the sole proprietor of the small company where Carolina worked, took the call. Dan told Ellen that Carolina owed Hospital a lot of money, was in “serious legal trouble” and would “likely go to jail for a long time” if the outstanding bills were not paid immediately. Dan also threatened that Hospital could sue Ellen and her company directly over the unpaid bills, since Carolina was working there at the time the charges were incurred.

Distraught over the telephone call, Ellen immediately called Carolina at home and told her that the company was too small to take the risk of expensive legal action and that Carolina’s employment was therefore terminated.

As a direct consequence of Carolina’s termination and the loss of her services, the company was unable to complete a major contract for its main customer and lost the contract.

1. **Did Dan’s acts expose Hospital to liability for violation of the Texas Debt Collection Act (“Act”), and, if so, what were the violations? Explain fully.**
2. **What rights and civil remedies, if any, does Carolina have under the Act against Hospital? Explain fully.**
3. **What rights and civil remedies, if any, does Ellen have under the Act against Hospital? Explain fully.**
4. **What rights and civil remedies, if any, do Carolina and Ellen have under Texas common law? 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

Frank and Molly, Texas residents, married and had twins, Wade and Willa. During their marriage, they lived in Round Rock, located in Williamson County. When the children were twelve years old, Frank and Molly divorced and Molly moved, with the children, to Austin, located in Travis County, and enrolled in a local community college as a full-time student. Frank remained in Round Rock, where he worked as a director at a very successful financial management firm.

Under the divorce decree, Frank and Molly were joint managing conservators of the children, with equal periods of custody, and Molly had the right to establish the children's primary residence. However, due to Molly's full-time class schedule, the children ended up spending two-thirds of the time with Frank and one-third with Molly.

Molly's father, Grant, died leaving a sizable estate, bequeathing \$10 million to each of his grandchildren, Wade and Willa, who were now 13 years old.

Molly immediately called the executor of Grant's estate and explained that, because Wade and Willa lived with her, the bequeathed sums should be delivered to her attention and that she was prepared to immediately open up accounts in the names of the children. Molly also faxed the executor a handwritten note from her son, Wade, that stated: "My mother, Molly, has permission to hold my money."

Upon learning of the bequests, Frank immediately filed an Application for Guardianship in Williamson County, requesting that the Court establish a single guardianship for both Wade and Willa, and appoint him as the Guardian. In support of his appointment request, Frank cited his vast experience in handling money and financial accounts. Frank also attached a letter handwritten by his daughter, Willa, stating that she wanted Frank to be appointed as her guardian.

Molly filed a response to Frank's Petition and requested that the Williamson County Court transfer the case to Travis County, where she asserted the children had their legal residence, and further asked that she be appointed as Guardian for both Wade and Willa because she and Frank "have never been able to agree on what's best for the children."

1. **Should Grant's executor comply with Molly's telephonic request that the money left to Wade and Willa in Grant's will be delivered to her? Explain fully.**
2. **Was Frank's Application for Guardianship legally sufficient to allow the court to act on it, and is Williamson County a county of proper venue? Explain fully.**
3. **What standard must the Court follow in determining the appointment of a guardian, and what are the Court's options under these circumstances? Explain fully.**

This concludes the Texas Essay portion of the exam.

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