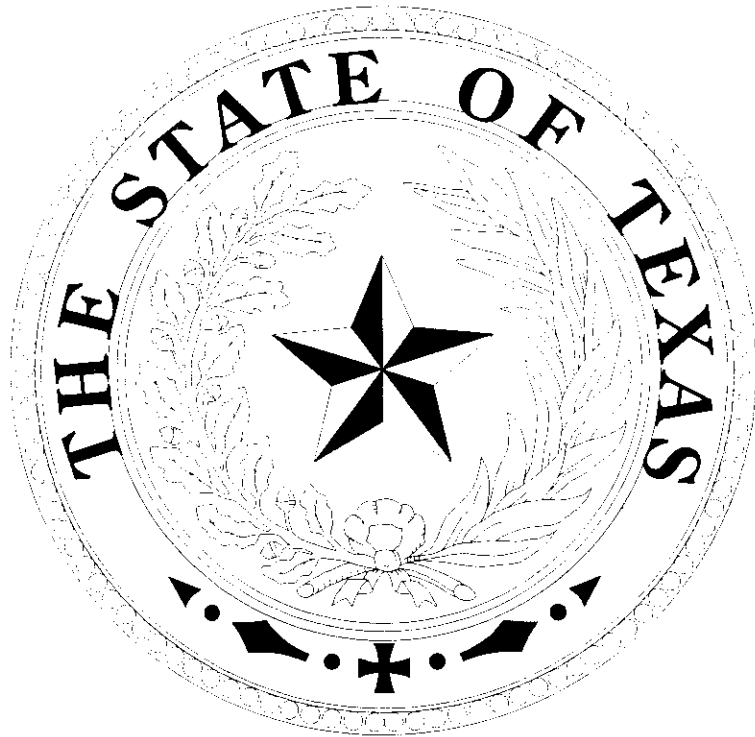


Thursday Morning
August 1, 2013
Essay Questions 1 - 6



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

Aunt, a resident of Texas, was 70 years old when she executed a valid will leaving her estate to her three nieces, Niece 1, Niece 2, and Niece 3. Aunt had never married or had children of her own.

When Aunt was 75 years old, she was diagnosed with cancer. Over the next two (2) years, Aunt was treated with several courses of chemotherapy and months of radiation. Niece 1 took considerable time off from work to accompany Aunt to her treatments and doctor appointments. Niece 2 and Niece 3 never participated in any of Aunt's medical care.

When it became apparent that Aunt was terminally ill and could no longer live at home, Niece 1 assisted Aunt in making arrangements for Aunt to enter a hospice center to spend her last days. Over the next six months, Niece 1 visited Aunt almost daily and attended to her every need. She encouraged Niece 2 and Niece 3 to visit Aunt, but they rarely visited or contacted Aunt.

During that time, Aunt was generally alert. She continued to manage her finances and pay her bills. Occasionally, she would become somewhat confused about which bills she had already paid.

Four days before she died, Aunt asked Niece 1 to call Aunt's lawyer (Lawyer) and asked her to come to the hospice center. Niece 1 did so, met Lawyer in the lobby of the hospice center, and directed her to Aunt's room. Niece 1 then left to go to work.

When Lawyer entered the room, she found Aunt in her bed. Unbeknownst to Niece 1, Aunt requested that Lawyer prepare a new will ("Second Will") leaving all of her possessions to Niece 1, including the ranch, the house, the livestock, and all of her money. Lawyer asked where Aunt's money was located, and Aunt responded that all of her accounts, including her brokerage account, were held at ABC Investments and that the accounts designated her estate as the beneficiary. Lawyer told Aunt she would return two days later.

Lawyer prepared Second Will, which expressly revoked the earlier will. Lawyer arrived to find Aunt waiting for her in a guest conference room. Aunt commented that she was relieved to "get this matter taken care of!" Lawyer noted that Aunt appeared to be in much pain and discomfort.

Lawyer watched as Aunt reviewed Second Will. Lawyer asked Aunt if she knew what she was signing and if she understood what was in the document. Aunt said, "I sure do. This is the new will I asked you to prepare, and I am leaving everything to my favorite niece who has taken such good care of me. I am really disappointed in the other two." The Second Will was then properly executed, and Lawyer took it back to her office.

After Aunt died, Niece 1 contacted Lawyer and discovered that she was the sole beneficiary to Aunt's estate. Niece 1 requested that Lawyer file Second Will for probate.

Niece 2 and Niece 3 filed a contest to Second Will, asserting that Aunt lacked testamentary capacity to execute Second Will and that Second Will, due to Aunt's age and medical condition, was the product of undue influence by Niece 1.

- 1. Did Aunt lack the testamentary capacity to execute Second Will? Explain fully.**
- 2. Was the evidence sufficient to support a finding that Second Will was the product of undue influence? 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

Rick and Alice married in 1986. At the time of their marriage, Alice owned Blackacre, which had been in her family for three generations. They had one child, Evan. Alice died in 1995 and left a valid will leaving all of her property to Rick. Before her death, she had told Rick that she hoped he would make sure that one day Evan would inherit Blackacre.

Rick married Suzy in 1998. At the time of their marriage, Suzy had a six-year-old daughter, Ginger, who was conceived during a one night stand. Suzy had no further communication with Ginger's father after the night of conception.

At the time of the marriage, Rick and Suzy agreed that Rick would formally adopt Ginger, and Ginger was thrilled when Rick told her he intended to do so. At the wedding ceremony, the priest asked Ginger jokingly, "Do you take this man to be your father?" Ginger enthusiastically said, "Yes!" Ginger believed from that moment forward that she was now the adopted daughter of Rick.

After the marriage, Rick and Suzy consulted an attorney regarding the adoption and learned that they would have to terminate the parental rights of Ginger's birth father. Suzy was reluctant to involve him in their lives, so a formal statutory adoption never took place. Nevertheless, Rick raised Ginger as his own child in every way, and, although Ginger never assumed Rick's surname, she always called him "Dad" and acted as Rick's dutiful daughter, returning his love and affection in the continued belief that she was his adopted daughter. Rick and Suzy divorced in 2012, but Ginger did not alienate herself from Rick.

In January 2013, Rick sold Blackacre and used the proceeds to purchase Whiteacre, located in McLennan County, Texas. Rick died three months later, survived by Suzy, Ginger, and Evan. After Rick's death, Ginger found an electric bill, dated October 2010, with the following handwritten, on the back of the bill:

"My Will

" I leave Blackacre, located in Bosque County, Texas, to my son, Evan. I leave the rest of my estate to my wife, Suzy, if she survives me, and if she does not survive me, to my heirs.

/s/ R."

Both Ginger and Suzy recognized the handwriting as Rick's.

Suzy claims that the writing on the back of the electric bill is Rick's valid will and claims that she is entitled to the entire estate.

Evan disputes that the writing is a valid will, but claims that, if it is a valid will, he is entitled to receive Whiteacre because the proceeds of the sale of Blackacre were used to purchase Whiteacre, and his mother had expressed the wish that Rick leave Blackacre to him. Evan further claims that, if the writing is not a valid will, then he is entitled to all of Rick's estate.

Ginger learned for the first time after Rick's death that Rick had never formally adopted her. Nevertheless, Ginger claims that the lack of a formal adoption is irrelevant and asserts that she is entitled to her fair share of the estate.

- 1. Does the writing found on the back of the electric bill constitute a valid will? Explain fully.**
- 2. Assuming that the writing is a valid will, as among Suzy, Ginger, and Evan, to whom and in what proportions should Rick's estate 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 December 15, 2012, Beth mailed her nephew, Michael, a \$2,500 check drawn on her account at First Bank as a gift to help him pay college tuition. Michael received the envelope containing the check, but he thought it was just another letter from his “crazy aunt Beth,” so he did not open the envelope. Instead, he put the envelope in his backpack, where it remained for more than six months.

On May 1, 2013, Beth realized that Michael had not cashed the \$2,500 check. She called Officer at First Bank, described the check, and requested orally that the check not be paid by the bank.

On July 5, 2013, Beth mailed a \$1,000 check drawn on her account at First Bank to Tom to pay him for installing a water heater at her house while she was on vacation. She had never met Tom. Tom received the check the following day. Upon receiving the check, Tom indorsed the \$1,000 check by signing his name on the back. He put the check in his shirt pocket to take to the bank, but he forgot about it. The check was still in his shirt pocket when Tom took his shirt to the laundry. Steve, who worked at the laundry, discovered the check in Tom’s pocket. Steve took the check. The next day, Steve went to Beth’s house. Steve told Beth he was Tom’s employee and that a bookkeeping error had resulted in Tom sending an incorrect invoice to Beth. Steve told Beth that installation of the water heater actually cost \$1,500. Beth then wrote a \$500 check drawn on her account at First Bank, payable to Tom, for the additional cost of installing the water heater. Steve signed Tom’s name to the back of the \$500 check, and cashed both checks at National Bank. First Bank paid both checks from Beth’s account when the checks were presented by National Bank.

Last week, Michael discovered the envelope from Beth in his backpack and opened it, finding the \$2,500 check. He indorsed the check to TVShop to purchase a big-screen TV. TVShop deposited the check at National Bank, which presented it to First Bank for payment. Beth has insufficient funds in her account to cover the check.

- 1. What are the rights, remedies, and defenses of the parties in regard to the \$500 and \$1,000 checks made payable to Tom? Explain fully.**
- 2. On what basis, if any, might First Bank assert that it is not obligated to pay the \$2,500 check made payable to Michael, and what liability, if any, would First Bank have to Beth if it paid the \$2,500 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

Landscape Inc. ("Landscape") was a Texas corporation (until it reorganized as explained below) engaged in the landscaping business. All of the following transactions occurred in 2013.

On January 3, Landscape borrowed \$1,000 from Carl and promised to repay the loan in six months. Landscape gave Carl a lawnmower to hold until the loan was repaid. The loan has not been repaid and Carl still has possession of the lawnmower. Carl never filed anything regarding the lawnmower in the public records.

On January 15, Landscape borrowed \$10,000 from Bank to finance a new landscaping project. Landscape signed a promissory note and security agreement giving Bank a security interest in "all of Landscape's equipment and tools now owned or hereafter acquired." At the time, Landscape owned the lawnmower and a number of wheelbarrows, shovels, and rakes. Bank properly perfected its security interest that day by filing a financing statement with the Texas Secretary of State.

On February 15, Landscape reorganized, changed its name to Builder Inc. ("Builder"), and began operating as a general contractor for home construction. On the same day, Landscape's owner changed the name on Landscape's checking account at Bank from "Landscape Inc." to "Builder Inc."

On March 30, Builder paid cash for and took delivery of a table saw from Equipment.

On April 1, Builder purchased on credit a large quantity of plywood from Lumber that Builder intended to use to build houses. Builder gave Lumber a promissory note and security agreement covering the plywood. Lumber has not filed a financing statement.

On April 15, Builder purchased on credit from Tools a number of hand tools for use in constructing houses. Builder gave Tools a promissory note and security agreement covering the hand tools. Tools properly perfected its security interest on April 16, by filing a financing statement with the Texas Secretary of State.

It is now July 15, and Builder cannot pay its bills.

As among Carl, Bank, Equipment, Lumber, and Tools, which has priority in the following items:

- 1. The lawnmower?**
- 2. The wheelbarrows, shovels and rakes?**
- 3. The table saw?**
- 4. The plywood?**
- 5. The hand tools?**

Explain your answers 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

Jack planned to attend law school in Texas. Without seeing it, Jack leased an apartment in Texas from Landlord. Jack signed a one (1) year lease with Landlord and wired a security deposit to Landlord.

When Jack arrived in Texas to begin law school, he briefly met with Landlord to take possession of the apartment. Jack found the apartment to be in a great location but not habitable due to a leaky ceiling, two (2) broken windows (both lacking safety latches as well), a broken entry door, a family of rats living in the apartment and a roach infested kitchen. Jack refused to move in and sent Landlord a detailed written notice of termination, listing the foregoing conditions and demanding an immediate return of his security deposit.

Jack found a new apartment and quickly moved in. Jack promptly went to see Landlord to again request a refund of the security deposit. Jack gave Landlord his forwarding address. Landlord agreed to release Jack from the lease, but refused to return the security deposit.

One of Jack's law school classmates convinced Jack that he should sue Landlord to recover the security deposit. Jack then learned that Landlord had completely repaired, changed the lock and relet the apartment.

1. **Did Landlord have a duty to Jack to repair the apartment? Explain fully.**
2. **Was Landlord required to return Jack's security deposit, and, if so, under what time frame and conditions? Explain fully.**
3. **Did Landlord have the right to change the lock on the apartment? 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

Maggie, a widow, owned fee simple title to Blueacre and Goldacre, both located in Irion County, Texas. On February 1, 2011, Maggie entered into two oil and gas leases with Gigantic Oil Company (“Gigantic Oil”), one covering Blueacre and the other covering Goldacre.

Each lease was dated February 1, 2011. The leases included the following provisions:

- The term of the Blueacre lease was for “three years from February 1, 2011, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from Blueacre.”
- The term of the Goldacre lease was for “one year from February 1, 2011, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from Goldacre.”
- The Blueacre lease stated, “if operations for drilling to a depth of at least 2,000 feet are not underway within one year from the date of the lease, the lease shall terminate unless Gigantic Oil pays to Maggie the sum of \$3,000 as a delay rental on or before February 1, 2012.”
- Both leases stated “When drilling or other operations are delayed or interrupted by fire, storm, flood, war, rebellion, insurrection, riot or strike, or as a result of any cause whatsoever beyond the control of Gigantic Oil, the duration of such delay or interruption shall not be counted against Gigantic Oil.”

On October 19, 2011, Gigantic Oil drilled to a depth of 750 feet and completed a gas well on Blueacre capable of producing a very small amount of gas that would be insufficient to pay costs of production. Gigantic Oil immediately shut-in the gas well.

On January 31, 2012, an employee of Gigantic Oil was on the way to pay Maggie the delay rental of \$3,000 for the Blueacre lease when the employee was involved in a serious accident. Consequently, the delay rental payment was not made, which Gigantic Oil did not realize until February 22, 2012. On that day, Gigantic Oil wired the \$3,000 payment to Maggie’s bank account, and sent her a letter stating that the failure to make a payment on or before February 1, 2012, was caused by an accident beyond its control, asserting that the late payment was excused by the force majeure clause of the lease.

Also on October 19, 2011, Gigantic Oil completed an oil well on Goldacre that produced paying quantities of oil. On February 5, 2012, a small fire caused by a lightning strike at the oil well on Goldacre caused its production to be shut down. Repairs were begun immediately, were completed on February 15, 2012, and production resumed on Goldacre the day repairs were completed. Gigantic Oil sent Maggie a letter informing her that production on Goldacre had resumed on February 15, 2012.

On March 4, 2012, Maggie returned to Gigantic Oil the \$3,000 delay rental payment for Blueacre and declared that she considered both leases terminated.

1. **Is Gigantic Oil’s lease of Blueacre terminated? Explain fully.**
2. **Is Gigantic Oil’s lease of Goldacre terminated? Explain fully.**

This concludes the morning portion of the Texas Essay exam.