

Thursday Morning
July 31, 2014
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

Abby, a Texas widow who died in 2014, was survived by her two adult children, Katie and Ellen. Abby had executed a valid attested self-proved will in 2009, which left \$10,000 to Katie, and the rest of her \$5,000,000 estate to Ellen.

Shortly after the will was admitted to probate, Katie learned that the day before Abby died, two of Abby's best friends, Pete and Rose, were visiting her in the hospital. Ellen was also there that day. Pete and Rose overheard Abby telling Ellen that Abby had written a new will.

When Ellen left to get coffee, Abby showed Pete and Rose a piece of paper with writing on it, which Pete and Rose recognized as Abby's handwriting. Pete and Rose remembered that it said that Abby was "revoking her prior will" and that her entire estate was to be "shared equally between Katie and Ellen." Abby's signature was at the end of the handwriting. Pete said that when Ellen had come back into the room after getting her coffee, Pete saw Abby hand Ellen the piece of paper and he heard Abby say, "Please put this in my lock box at the bank, and tear up my old will".

When Katie confronted Ellen about the later handwritten will, Ellen said that Pete was mistaken. The handwritten will that Pete and Rose say they saw at the hospital has not been found.

Ellen filed Abby's 2009 will for probate. Katie filed an application in the Probate Court alleging the existence of the handwritten will, seeking to have it probated as Abby's Last Will and Testament.

1. Is it likely that Katy can satisfy the requirements under the Texas Estates Code to prove the existence of Abby's handwritten will and have it admitted to probate as Abby's Last Will and Testament? Explain fully.
2. How should Abby's estate be distributed? 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

Bill and Linda married in 1990 and resided in Texas. They had two natural children, Sarah and Claire. Linda had adopted a son, Thomas, prior to her marriage to Bill. Claire is still a minor.

In 2014, Bill and Linda died as a result of a boating accident. Bill died instantly, and Linda died a day later. Neither left a will.

At the time of their deaths, Bill and Linda were debt-free, with the exception of a lien on their homestead. They owned the following property, all of which was acquired during their marriage:

- (a) A homestead;
 - (b) A \$500,000 life insurance policy naming Bill as the insured, Linda as the beneficiary, and Bill's estate as the alternate beneficiary;
 - (c) A \$200,000 life insurance policy naming Linda as the insured, Bill as the beneficiary, and Sarah as the alternate beneficiary;
 - (d) A \$75,000 joint checking account; and
 - (e) A farm in Kansas, valued at \$1,000,000, that Bill inherited after the death of his mother.
1. To whom and in what proportions should the following assets be distributed? Explain fully.
- a. Homestead
 - b. The \$500,000 Life Insurance Policy insuring Bill
 - c. The \$200,000 Life Insurance Policy insuring Linda
 - d. Checking account
 - e. Farm in Kansas valued at \$1,000,000
2. Do the estates of Bill and Linda each have the option of transferring the assets to their heirs using a Small Estate Affidavit? 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 January 1, Abner and Blake opened a for-profit grocery store in Texas called AB Produce LLC. They complied with all requirements for the formation of a Texas limited liability company. Their written Company Agreement contained the following provision:

"We hereby agree to jointly own and manage AB Produce LLC ("ABP") as Managing Members. We will both have the authority to enter into agreements on behalf of ABP. We will not be personally liable to third parties for any obligation of ABP. We will not be personally liable to ABP for breach of any fiduciary duty unless our gross negligence or intentional misconduct causes ABP to suffer damage or loss."

In March, while driving an ABP delivery truck in the course and scope of his employment, an ABP employee ran a red light and collided with Motorist. Motorist filed suit for personal injury and property damage, naming ABP, Abner and Blake as defendants.

In June, ABP received a large, prepaid grocery order from Customer. The contract between Customer and ABP, which was signed by both Abner and Blake as "Managing Members," specified that the order had to be delivered no later than 5 p.m. on June 15, and that late delivery would not be accepted. Abner requested that Blake personally deliver the order, and Blake agreed. Unbeknownst to Abner, Blake had a serious drinking problem.

On June 15, while on the way to deliver Customer's order, Blake decided to stop at a local bar, where he became intoxicated. At 4:45 p.m. Blake left the bar in an attempt to meet the 5 p.m. delivery deadline but, because he was intoxicated, he misjudged his speed on a sharp curve and crashed the delivery truck, destroying both the truck and Customer's order. Blake's blood alcohol level was measured at three times the legal limit. Customer filed suit seeking to recover the value of the order and other damages, naming ABP, Abner and Blake as defendants. ABP filed a cross-claim against Blake for breach of fiduciary duty, seeking to recover from him the value of the delivery truck and its contents.

1. In Motorist's suit, which of the defendants, if any, are liable to Motorist and which are not liable? Explain fully.
2. In Customer's suit, which of the defendants, if any, are liable to Customer and which are not liable? Explain fully.
3. Should ABP prevail on its cross-claim against Blake? 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

Ashley, a Texas resident who was born and raised in Louisiana, is the designated "managing partner" of Rich Partners, Limited ("RPL"), a for-profit business that has its only office in Texas and conducts all of its business in Texas. In addition to Ashley, there are five (5) other partners, all of whom are Texas residents. Because of the secret and proprietary nature of RPL's business, the partners have agreed not to: (i) disclose RPL's existence to the general public; or (ii) file any information containing RPL's name, address or business purpose with any government agency. RPL's written partnership agreement, the sole copy of which is locked in a safe in RPL's office, contains the following provisions:

- a. Any partner who wishes to access RPL's books and records may do so, but only: (i) during normal business hours; (ii) under Ashley's supervision; and (iii) after reimbursing RPL for the reasonable cost of making the books and records available;
 - b. No partner will be liable to RPL's creditors beyond the amount of his or her investment in RPL;
 - c. No partner can be held liable to RPL for breach of the duty of care or the duty of good faith unless the partner has engaged in willful or intentional misconduct;
 - d. No partner may sell, transfer or assign his interest in RPL to any person who is not already a partner in RPL; and
 - e. RPL's affairs are to be governed by Louisiana law.
1. Is RPL a general partnership, limited partnership, or Limited Liability Partnership? Explain fully as to each.
 2. Which of the above-listed provisions of RPL's partnership agreement are valid and which are not? 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

Sara created two trusts, Trust I and Trust II, both of them for the use and benefit of herself and her elderly mother, and funded the trusts by depositing cash into two accounts with National Bank ("Bank").

Each trust named Bank as Trustee and provided Bank with the exclusive authority to "pay all or part of the income of the trust to the beneficiaries in a manner and at a time to be determined by Bank in its sole discretion." Each trust also authorized Bank to pay Sara or her mother out of the trust principal, if necessary, for their "support, health and maintenance." Trust I included express language making the trust irrevocable and also included a valid spendthrift clause. Trust II was silent as to revocability and included a valid spendthrift clause. Thereafter, the following debts and obligations arose:

- a.) An IRS tax lien against Sara for unpaid taxes;
- b.) A money judgment against Sara's mother for an unpaid hospital bill;
- c.) A judgment against Sara for unpaid child support;
- d.) Unpaid charges incurred by Sara's mother on the Shopping Channel for costume jewelry; and
- e.) An adverse judgment obtained against Sara by a former business partner in a contract dispute.

Which of the following debts and obligations, if any, may be satisfied with the principal and/or income in Trust I, Trust II, or either of them:

- a. IRS lien?
- b. Hospital bill?
- c. Unpaid child support?
- d. Unpaid Shopping Channel charges?
- e. Adverse judgment obtained against Sara by a former business partner in a contract dispute?

Explain fully as to each.

**If WRITING, answer Question 6 in the TAN answer book.
If using LAPTOP, be certain you answer in the correct screen.**

QUESTION 6

Pat and Sandra are getting married. Pat goes to Big Bucks Diamonds ("Big Bucks") to shop for a diamond wedding ring. At Big Bucks, Pat consults with Dan, a Big Bucks employee, who tells Pat that he is a "certified Gemologist." After looking at several highly priced rings, Pat tells Dan that the rings cost more than he can afford. Dan tells Pat, "You should go to Discount Diamonds. Their diamond rings are top of the line, of the highest quality, and much cheaper than here." Dan also said, "Discount Diamonds is well-established in the diamond business. Don't tell my boss, but you can tell Discount Diamonds that I sent you. However, I don't want to be responsible if you're not satisfied." Dan made Pat sign a hand-written note that read: "I promise not to hold Dan responsible for any purchase at Discount Diamonds."

Pat goes to Discount Diamonds ("Discount"), where he is told by Roscoe, a Discount salesperson, that Discount's diamonds are "authentic" and "of the highest quality." Roscoe also tells Pat that all diamonds come with a written guarantee that reads: "90 Day Money Back Guarantee. After 90 days, no returns—no exceptions."

Pat buys a diamond ring from Discount that is more than he can afford because he was reassured by Roscoe's statement that the diamond was "of the highest quality."

Shortly before Pat and Sandra's one-thousand guest wedding is to take place, Pat and Sandra discover that the diamond ring is a fake. Deeply upset, Sandra calls off the wedding and breaks up with Pat. Pat loses the tens of thousands of dollars he spent towards the wedding and honeymoon in Maui.

Distraught, Pat visits a psychologist for counseling. He also consults with an attorney, who files suit that very day against Dan, Big Bucks, Discount and Roscoe. Discovery reveals that Dan and Discount have an agreement under which Dan is paid ten percent of every sale made by Discount to a customer referred by Dan. It is also discovered that, well known to Dan, Discount has a very bad reputation in the diamond business for shady practices and sub-standard products.

1. What claims, if any, may Pat assert against Dan, Big Bucks, Discount and Roscoe under Texas consumer laws? Explain fully.
2. What remedies and damages, if any, may Pat seek under Texas consumer laws? Explain fully.
3. What defenses, if any, may Dan, Big Bucks, Discount, and Roscoe assert and which defenses, if any, are likely to succeed? Explain fully.

This concludes the morning portion of the Texas Essay exam.