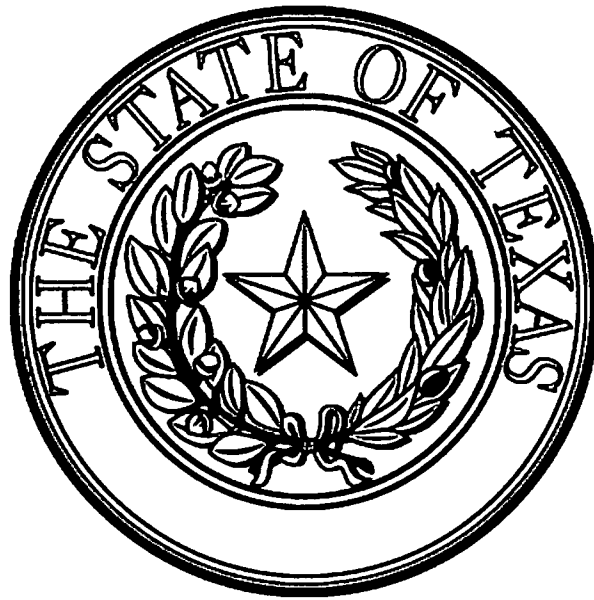


Thursday Morning
July 30, 2015
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

**If WRITING, answer Question 1 in the GOLD answer book.
If using LAPTOP, be certain you answer in the correct screen.**

QUESTION 1

In 2005, Bob, a Texas resident, executed a valid, self-proved will (the “Will”) in his attorney’s office. The attorney and his secretary both signed the Will as witnesses. Bob took the original Will home with him and placed it in his filing cabinet. A copy was kept in Bob’s file at his attorney’s office. The primary beneficiary of the Will was Ann, Bob’s second wife.

In 2013, Bob, who had recently been suffering from some memory loss, cleaned out his filing cabinet and inadvertently threw away the Will.

Over the next few years, Bob sometimes threw away unopened mail and other important documents by mistake.

In 2015, before Bob died, he told Ann she could find the Will in the filing cabinet. A friend of Bob overheard this statement made by Bob. After Bob’s death, Ann was unable to locate the Will. She did obtain a copy of the Will from the attorney’s office.

- 1. What must Ann prove to probate a copy of the Will? Explain fully.**

- 2. Must Ann prove that Bob validly executed the Will? 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

Betsy, a Texas resident, died last month without a will. Betsy is survived by Jason, her second husband; Alice, her adult daughter from her first marriage; and Toby, her adult stepson.

At the time of her death, Betsy and Jason had no debts. The following assets were in Betsy's estate:

- (a) A Homestead valued at \$250,000 that Betsy and Jason bought during their marriage;
- (b) A \$25,000 Certificate of Deposit, held with Alice, as joint tenants with right of survivorship;
- (c) A Checking Account in the amount of \$10,000 held as joint tenants with Jason;
- (d) A Lake House valued at \$200,000 that Betsy owned prior to her marriage to Jason; and
- (e) Other Personal Property valued at \$5,000 that Betsy inherited from her mother.

1. To whom and in what proportions should the following assets be distributed? Explain fully.

- (a) Homestead;**
- (b) Certificate of Deposit;**
- (c) Checking Account;**
- (d) Lake House; and**
- (e) Other Personal Property.**

2. Under the Texas Estates Code, what are the various means by which heirs might settle and distribute a decedent's intestate estate, and which of those means would work best for Betsy's heirs in this case? 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

Seth owned two tracts of land, Redacre and Whiteacre. Seth instructed his friend and lawyer, Larry, to use Redacre to set up a trust “for the benefit of my son, Jack,” and to use Whiteacre to set up a trust “for safekeeping.” Seth conveyed both tracts as follows: “To my lawyer, Larry, as Trustee.”

Larry prepared two different trust documents, one reciting that “Redacre shall be held for the benefit of Jack, a minor,” (“Redacre Trust”), and the other reciting that “Whiteacre shall be held for safekeeping,” (“Whiteacre Trust”). Both trusts designated Larry as the trustee. Each trust document included a detailed property description, and neither trust document indicated whether it was revocable.

Subsequently, without Seth’s knowledge or approval, Larry sold Whiteacre for \$300,000. Larry deposited the sale proceeds in his private bank account.

Later, Seth decided to buy another tract of land, Blueacre, but he was concerned about publicity regarding the acquisition. Seth paid the full purchase price and had title to the property issued in Larry’s name. Larry and Seth orally agreed that Larry would prepare documents conveying Blueacre to Seth at a later date.

Still later, Seth decided to sell Whiteacre. When he directed Larry to sell it, he learned for the first time that Larry had already sold Whiteacre. He demanded that Larry turn the proceeds of the sale over to him. Larry refused, saying that he was required, as trustee, to hold the money “for safekeeping.”

Seth then asked Larry to convey Blueacre to him. Larry refused, claiming that, since there was nothing in writing at the time of the purchase, he assumed that Seth gave him Blueacre as a gift for his many years of loyal friendship.

- 1. Were the Redacre Trust and the Whiteacre Trust valid under Texas law? Explain fully.**
- 2. What remedies, if any, does Seth have against Larry as a result of Larry’s sale of Whiteacre? Explain fully.**
- 3. Can Seth compel Larry to convey Blueacre to him? 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

Lisa and Robert were joint owners of a bakery. After a falling out, they decided to dissolve the business, and Lisa immediately contacted Credit Card Co. ("Credit") to cancel the bakery's credit card, which had been issued in Lisa's name.

Before Credit was able to effect the cancellation, Robert charged \$5,000 of personal purchases, which Lisa neither authorized nor knew about. Pursuant to a valid written agreement between Lisa and Credit, Lisa had no liability for unauthorized charges like Robert's.

Subsequently, Lisa received a letter from Credit, claiming that Lisa was responsible for the \$5,000 charged by Robert and demanding immediate payment of the amount "or else serious legal action will ensue." Lisa wrote a letter to Credit explaining that she had not authorized the charges and pointing out that, under the written agreement with Credit, she was not responsible for the charges.

Then, David, an employee with Credit, called Lisa at home and said he represented "the Credit Card Bureau" and that she needed to pay the outstanding amount "as soon as possible", or else "criminal charges" would be filed against her. David also told her that she was "plain dumb" if she thought she could avoid paying and that the written agreement between her and Credit was "worthless." He also said that a civil lawsuit was being filed against her and that she would ultimately lose everything she owned, including her house, if she didn't pay "right away."

David began calling Lisa repeatedly at her new place of employment and leaving voicemails at her home, making the same types of comments. David also called Lisa's supervisor and told her that Lisa was refusing to pay an undisputed debt.

As a result of the disruption at Lisa's new job caused by David's constant calling, Lisa lost her job. She became extremely distraught and had to seek medical attention for anxiety. She also sought the advice of a lawyer.

- 1. Did Credit and/or David's conduct and actions violate Texas consumer laws? Explain fully.**
- 2. What remedies, if any, are available to Lisa under Texas consumer laws? 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

Mother and Father, the parents of two minor children, divorced in Texas. The divorce decree named Mother sole managing conservator of the children and named Father possessory conservator.

Subsequently, Mother was diagnosed with cancer. During the illness, Mother and the children moved into maternal Grandmother's home so that Grandmother could assist and care for Mother and the children. Mother died after she and the children moved in with Grandmother. Two years later, Father obtained a writ of habeas corpus and took possession of the children from Grandmother.

Six months after Father took possession of the children, Father filed a "Petition to Modify Parent-Child Relationship" requesting that the divorce decree be modified to appoint him sole managing conservator. Grandmother filed a petition in intervention in the modification suit ("Intervention Petition") and a separate suit affecting the parent-child relationship requesting possessory conservatorship of the children ("Original Suit").

Father moved to dismiss Grandmother's Original Suit and her Intervention Petition on the ground that Grandmother lacked standing to file either.

At the hearing on Father's motion to dismiss, Grandmother offered proof that Father changed jobs multiple times, was in and out of homeless shelters, failed to send the children to school on a regular basis, and failed to adequately discipline the children.

The trial court dismissed both the Original Suit and the Intervention Petition on the ground that Grandmother lacked standing.

- 1. Did the trial court err in dismissing Grandmother's Original Suit? Explain fully.**
- 2. Did the trial court err in dismissing Grandmother's Intervention Petition? 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

Husband and Wife married in 2009. Shortly after the wedding, Wife's father gave Husband and Wife \$100,000. Husband and Wife each deposited \$50,000 in individual savings accounts opened in their own names.

In 2010, Husband used \$25,000 of his savings to purchase stock in X Corporation and \$10,000 to purchase a 1969 Mustang that he hoped to restore. During the marriage, \$10,000 in dividends from the X Corporation stock were deposited in Husband's savings account.

Husband and Wife acquired a residence in 2012 at a purchase price of \$500,000. Husband's mother gave Husband \$50,000 to use as a down payment. Husband and Wife co-signed the home loan for the remaining \$450,000. All payments on the home loan were made with Husband's earnings from his job during the marriage.

The following year, Husband and Wife purchased a vacation condominium for \$300,000. Both of them signed the condominium loan to finance the entire purchase price. The loan was secured with a lien. Title to the condominium was placed in Wife's name alone.

In 2014, Wife's father died and she inherited a substantial sum of cash. She spent \$40,000 of her inheritance to restore Husband's 1969 Mustang and \$200,000 to reduce the principal on the condominium loan.

Wife later filed for divorce.

1. How should the court characterize the ownership of each of these assets?

- (a) The savings accounts;
- (b) The stock in X Corporation;
- (c) The 1969 Mustang;
- (d) The home valued at \$500,000; and
- (e) The condominium valued at \$300,000.

Explain fully.

2. What rights of reimbursement, if any, do Husband and Wife have with respect to the following contributions made during the marriage?

- (a) The \$50,000 down payment on the residence? Explain fully.
- (b) The \$40,000 spent to restore the 1969 Mustang? Explain fully.
- (c) The \$200,000 payment made to reduce the principal on the condominium loan?

Explain fully.

This concludes the morning portion of the Texas Essay Questions.