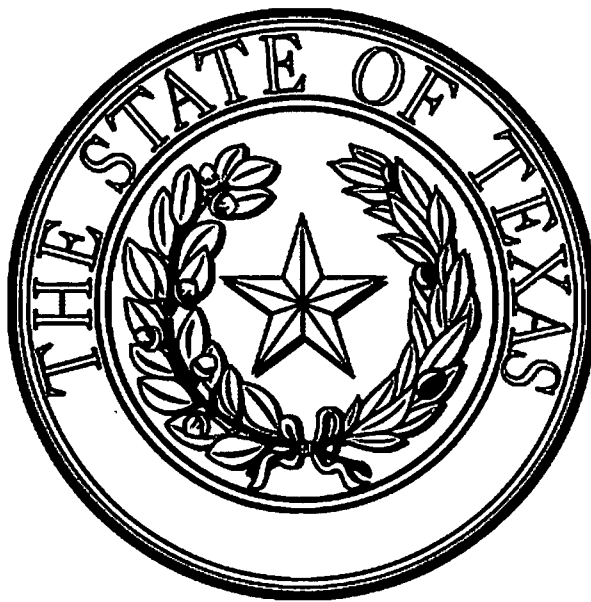


Thursday Afternoon  
July 30, 2015  
Essay Questions 7 - 12



## **TEXAS BAR EXAMINATION**

**If WRITING, answer Question 7 in the RED answer book.  
If using LAPTOP, be certain you answer in the correct screen.**

### QUESTION 7

In January, Fred and Barney agreed to start a for-profit internet consulting business in Texas called FB Online Partners, Ltd. ("FB"). They did not file any documents with the Texas Secretary of State, but did sign a written agreement that contained the following provisions:

We hereby agree to jointly own and operate FB Online Partners, Ltd. We will share the profits equally, but only after our initial investments have been paid back. We will not be personally liable to third parties for any obligation of the business. Neither of us will be liable for any mistakes made by the other.

After signing the agreement, Fred deposited an initial investment of \$10,000 into FB's bank account at National Bank. Barney, as his initial investment in FB, and with Fred's agreement, contributed computers and associated equipment valued at \$10,000.

In June, Barney obtained a \$10,000 loan from National Bank by executing a promissory note listing FB as borrower and National Bank as lender. He signed the promissory note as follows: "FB by Barney." The note required FB to pay interest only for the first 12 months, with the entire principal balance due and payable at the end of 12 months. Barney deposited the loan proceeds into his personal bank account. He then used the loan proceeds to purchase new computer equipment, for his personal use at home, to replace the computer equipment he had contributed to FB. Barney made the monthly interest payments from his personal funds, and Fred knew nothing about the loan or Barney's use of the loan proceeds.

By July, Fred decided that he should be entitled to a greater share of FB's profits because he had been generating substantially more business for FB than Barney. Rather than discuss this issue with Barney, Fred started using FB's computers and other resources to provide internet consulting services to clients on his own rather than as a representative of FB. By December, he had collected \$20,000 from this "side venture", all of which he deposited into his personal bank account.

By the end of the year, FB had generated a \$150,000 net profit. In preparing to meet with Fred to discuss distribution of FB's profits, Barney learned of Fred's side venture. He promptly sued Fred for an accounting of the proceeds from that venture. During discovery in the lawsuit, Fred learned of the loan Barney had taken in FB's name. Fred then counterclaimed against Barney for an accounting of the loan proceeds. Both Fred and Barney have requested that the Court decide how FB's profits should be distributed between them.

- 1. What type of business organization is FB Online Partners, Ltd.? Explain fully.**
- 2. Given Barney's use of the loan proceeds and Fred's side venture, how should the Court apportion FB's profits as between Fred and Barney? 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**

Alice and Bernice, licensed Texas accountants, validly formed Alice & Bernice, PLLC ("PLLC") to provide accounting services in Texas. Alice was the designated Managing Member of PLLC. After its formation, PLLC entered into a contract with Larry, a licensed Texas attorney, to assist PLLC with the collection of delinquent invoices to PLLC's clients. Alice signed the contract as "Managing Member of PLLC." Under the contract, Larry was to receive one-third of all funds PLLC received from the delinquent invoices.

As a direct result of Larry's efforts, PLLC collected 100% of the delinquent invoice amounts but did not pay Larry his one-third share of the collections. Instead, Alice and Bernice offered to admit Larry as a member of PLLC, which would entitle Larry to a percentage of PLLC's profits as payment for his past and future collection services. Larry is considering whether to accept the membership offer or file suit against PLLC, Alice, and Bernice for the amount due to him under the contract.

- 1. Can Larry be lawfully admitted as a member of PLLC? Explain fully.**
- 2. If Larry elects to file suit against PLLC, Alice, and Bernice, which of them can be held liable for PLLC's failure to pay Larry per the terms of the contract, and which of them cannot be held liable? 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**

Mark decided to renovate his Dallas County, Texas home (“Property”). He hired Contractor (“Contractor”) to do the renovation. Mark signed Contractor’s standard construction contract (“Contract”), which detailed the work to be performed, the construction schedule, and the payment schedules. The Contract provided that the renovation would include the fabrication and installation of a custom hand-carved staircase, new front entry walls, fresh interior paint throughout the 7,500 square foot residence and new backyard landscaping. The Contract was silent as to the amount of the contract price Mark was to withhold as retainage.

Mark moved to his vacation home in Florida to wait out the Property renovations.

Contractor proceeded with renovations and completed the landscaping project. Contractor hired a subcontractor (“Staircase Artisan”) to craft a new hand-carved staircase and oversee its installation. Contractor demolished the Property’s existing staircase to make room for the new one. Under the terms of its subcontract, Staircase Artisan was to be paid in full immediately upon completion of the staircase. Staircase Artisan completed fabrication of the new hand-carved staircase but refused to deliver it to the Property without payment. The staircase was not installed, and Contractor abandoned the jobsite, having completed all of the Property’s renovation except for installation of the new staircase.

Unaware that Contractor had left the jobsite, Mark paid Contractor the remaining balance of the Contract without withholding any retainage.

Staircase Artisan timely filed a lien Affidavit against the Property with the Dallas County Clerk.

- 1. Does Staircase Artisan have a valid lien against the Property? Explain fully.**
- 2. To whom, within what period of time, and by what means is Staircase Artisan required to send notice of a filed lien Affidavit? Explain fully.**
- 3. What duty, if any, did Mark have to withhold a retainage from his payments to contractor? 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**

Blackacre and Whiteacre are adjoining five hundred acre tracts of land in Concho County, Texas. Ann owned Blackacre, and Betty owned Whiteacre.

In April 2009, Ann conveyed Blackacre to Cary by a properly executed and recorded general warranty deed.

In the general warranty deed, Ann reserved for herself “all oil, gas, and other minerals in and under and that may be produced from Blackacre.”

On June 1, 2013, Ann and Betty each entered into oil and gas leases with BigOil covering Blackacre and Whiteacre, respectively. Both leases contained the following provisions:

- The stated term was “one year from June 1, 2013, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from the leased tract.”
- BigOil had the right, at its option, to pool all or part of the leased acreage with other land in the immediate vicinity, if necessary or advisable to properly develop the leased acreage.
- In order to form a pooled unit, BigOil was required to sign and record in the Concho County real property records an instrument identifying and describing the pooled acreage.
- Under the pooling clauses, production on pooled acreage would be treated as if it were from the leased acreage, whether or not the well was located on the leased acreage.
- Also, Betty’s Whiteacre lease with BigOil stated that the lease would remain in force only as to those lands within the pooled units upon which production was already occurring at the end of the primary term.

On October 2, 2013, BigOil formed a unit by pooling the north half of Whiteacre and the north half of Blackacre, and identified the unit in a signed and recorded instrument as required in the leases. BigOil promptly drilled an oil well on the pooled portion of Whiteacre, and the well began to produce in paying quantities in November 2013.

In May 2014, Ann and Deb entered into a lease for water rights attributable to Blackacre.

On July 15, 2014, BigOil formed a unit by pooling the south halves of Whiteacre and Blackacre and identified the unit in a signed and recorded instrument as required in the leases. Betty objected.

- 1. Is BigOil entitled to form a pooled unit that includes the south part of Whiteacre? Explain fully.**
- 2. Who owned the water rights attributable to Blackacre in May 2014? 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

For 10 years, Susan was employed as Stanley's personal assistant. Part of Susan's duties included managing Stanley's checking account at Metro Bank, balancing the account each month, and preparing checks in payment of bills for Stanley's signature. Stanley knew that Susan had experienced financial problems several times during her employment with him. In September 2014, Susan retired and moved from Dallas to Harlingen, Texas. On the day Susan left Stanley's employ, she took a check from Stanley's Metro Bank checkbook without his knowledge.

On December 15, 2014, Susan filled out the check she had taken from Stanley's checkbook, making it payable to herself for \$500. She forged Stanley's signature as payor on the check and cashed it at Valley Bank.

When the check was submitted by Valley Bank to Metro Bank for payment, Metro Bank paid the check. Metro Bank charged Stanley's account even though the signature on the forged check looked nothing like Stanley's signature. Consistent with its policies, Metro Bank did not compare the signature on the signature card for Stanley's account with the signature on the forged check.

Stanley received his monthly statement from Metro Bank on January 3, 2015 but did not open it until March 15, 2015. At that time, Stanley discovered the check Susan had forged three months earlier. He immediately called Metro Bank to report the forgery and demanded that Metro Bank credit his account for \$500. Metro Bank has refused to do so,

After Susan left Stanley's employ, Stanley received a check dated October 1, 2014, payable to him from Ace Sign Company ("Ace"), a tenant in a building Stanley owns in suburban Dallas. The \$10,000 check drawn on Suburban Bank was for one year's rent. Stanley put the check in his desk drawer, and forgot about it. On May 1, 2015, realizing that Stanley had not cashed the \$10,000 check, Ace telephoned Suburban Bank and instructed Suburban Bank to stop payment on the check.

On June 15, 2015, Stanley deposited the check into his account. When Metro Bank presented the check for payment to Suburban Bank, Suburban Bank paid the check despite Ace's instruction not to do so. This caused Ace's account at Suburban Bank to be overdrawn.

- 1. Metro Bank has asserted the following defenses in support of its refusal to credit the \$500 back to Stanley's account:**
  - (a) Stanley is estopped to assert the forgery because Susan had been his personal assistant.**
  - (b) The loss is the result of Stanley's negligence in failing to secure his checkbook.**
  - (c) Stanley failed timely to report the forgery.**
  - (d) Metro Bank did not breach any duty of ordinary care in processing the check.**

**What is the likelihood Metro Bank will prevail on each of the defenses? Explain fully.**

- 2. What rights, if any, does Ace have against Suburban Bank for paying the \$10,000 check to Stanley over its instruction not to do so? 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**

On January 2, Capitol Bank (“Capitol”) loaned Herman \$50,000 to be repaid by Herman in monthly payments due on the first of each month. Capitol took a security interest in a small sculpture owned by Herman that was created by a famous artist. Capitol duly perfected its security interest. Herman retained the sculpture, which he continued to display in his law office.

Herman failed to make his April and May payments to Capitol. On May 15, Capitol demanded payment of the entire debt, as provided for under the terms of the security agreement with Herman. When Herman failed to pay the debt in full, Capitol took possession of the sculpture on May 25, as allowed under the security agreement. Capitol incurred no costs in taking possession of the sculpture from Herman. On June 1, Capitol delivered a notice to Herman informing him that it intended to sell the sculpture at a private auction to be held on June 3 at Capitol’s offices. The notice further stated that Capitol intended to keep the sculpture if it received no acceptable offers at the auction.

Capitol held the auction on June 3 but no one attended and the sculpture was not sold. Capitol then decided to keep the sculpture and not make further attempts to sell it. On June 8, Herman was notified in writing of that decision. On June 9, Herman delivered a letter to Capitol objecting to Capitol’s decision to keep the sculpture. Capitol ignored Herman’s objection, put the sculpture on display in its lobby, and took no action to cancel Herman’s debt.

On June 20, Herman tendered to Capitol in cash the full amount of the debt, including both principal and interest, and demanded return of the sculpture. Capitol refused Herman’s tender and kept the sculpture.

- 1. What remedies, if any, does Herman have against Capitol with regard to Capitol’s refusal to return the sculpture? Explain fully.**

**This concludes the Texas Essay Questions.**

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**I UNDERSTAND THAT THE FOLLOWING ACTS ALSO CONSTITUTE MISCONDUCT: OBTAINING OR SEEKING TO OBTAIN ACCESS TO THE ACTUAL QUESTIONS CONTAINED ON THIS EXAMINATION PRIOR TO THE START OF THE EXAMINATION, COPYING OR RECEIVING ANY INFORMATION FROM ANY EXAMINEE, GIVING OR TRANSMITTING INFORMATION TO ANY EXAMINEE, DISCUSSING QUESTIONS WITH ANYONE BEFORE THE CONCLUSION OF THE EXAM, LEAVING THE SECURED AREA DURING ANY PORTION OF THE EXAM, WRITING AFTER TIME IS CALLED, TAKING ANY EXAM ANSWERS OUTSIDE OF THE EXAM ROOM, AND ANY OTHER ACT THAT MIGHT COMPROMISE THE SECURITY OR INTEGRITY OF THE EXAM. I UNDERSTAND THAT ANY SUCH MISCONDUCT MAY RESULT IN A HEARING BEFORE THE BOARD, THE OUTCOME OF WHICH COULD INCLUDE NULLIFICATION OF MY EXAM SCORES OR A FINDING THAT I LACK THE PRESENT GOOD MORAL CHARACTER REQUIRED FOR ADMISSION.**

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