

Examinee
Number

Bar
Code

Thursday Afternoon
February 25, 2016
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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**If writing, answer Question 7 in the red answer book.
If laptop, answer in the screen marked Question 7.**

Question 7

On March 1, 2015, Customer hired Supplier to install a new home entertainment system (the “Entertainment System”). Customer and Supplier signed a contract establishing the \$5,000 purchase price and the completion date for the project. Customer persuaded Supplier to take two promissory notes in payment. Customer properly executed and delivered to Supplier two notes, each payable to Supplier. One note was for \$3,000 and it matured on June 1, 2015. The other note was for \$2,000 and it matured on June 15, 2015.

On March 15, 2015, Customer learned that Supplier could not timely install the Entertainment System. As allowed under the contract, Customer called Supplier to cancel the order and directed Supplier to immediately return the two promissory notes to him.

Supplier disregarded Customer’s instruction to return the signed promissory notes. Instead, on March 16, 2015, Supplier indorsed the \$3,000 note by signing it on the back and delivering it to ABC TV Company (“ABC”) in satisfaction of a debt Supplier owed to ABC. Supplier also indorsed the \$2,000 note and gave it to his daughter Jane as a wedding gift. When Supplier gave the notes to ABC and Jane, neither of them knew that Customer had cancelled the contract with Supplier and that Supplier had failed to return the notes to Customer as demanded. On April 1, 2015, ABC learned that Customer had cancelled his contract with Supplier and had demanded Supplier return the promissory notes.

On the respective maturity dates of the notes, ABC and Jane presented them to Customer and demanded payment. Customer refused to pay either ABC or Jane, telling each that Supplier had breached his contract with Customer to timely install the Entertainment System.

- (1) What liability, if any, does Customer have to ABC for the \$3,000 promissory note? Explain fully.**
- (2) What liability, if any, does Customer have to Jane for the \$2,000 promissory note? Explain fully.**

**If writing, answer Question 8 in the light green answer book.
If laptop, answer in the screen marked Question 8.**

Question 8

A Texas bank (“Bank”) loaned \$150,000 (the “Loan”) to Modern Music Store (“Modern”) in Austin, Texas, and took a security interest in all of Modern’s inventory, equipment, and supplies (collectively, the “Collateral”). The Collateral included three vans that were fully paid for and used by Modern exclusively for business deliveries.

Bank lawfully perfected its security interest in the Collateral. The security agreement executed by Modern in connection with the Loan provided that if Bank repossessed the Collateral, Modern waived any damages that might result from Bank’s actions.

After Modern defaulted on the Loan, Bank gave all required notices to Modern before taking steps to repossess the Collateral. Bank hired Butch, an independent contractor, to repossess the Collateral that was inside the store. Butch is a physically imposing man. He entered Modern’s store carrying a baseball bat and wearing police-style clothing. Becoming very afraid, Modern’s owner (“Owner”) yelled at Butch not to touch any property in the store and then Owner locked himself in a store bathroom. Ignoring Owner’s protests, Butch removed all the Collateral in the store.

Late one evening, Bank dispatched employees to seize the three vans when no one from Modern was around to object. One van was parked in an unlocked parking lot owned by Modern and easily accessible to Bank’s employees. The other two vans were parked on the city street adjacent to the parking lot. Bank’s employees jump-started all three vans and drove them to a lot where Bank keeps repossessed vehicles.

Owner has closed the store but has demanded that Bank return the Collateral as having been improperly re-possessed. Bank has refused to do so.

- (1) What remedies, if any, does Modern have against Bank with regard to the Collateral seized by Butch? What defenses may Bank raise? What is the likely outcome? Explain fully.**
- (2) What remedies, if any, does Modern have against Bank with regard to the Collateral seized by Bank’s employees? What defenses may Bank raise? What is the likely outcome? Explain fully.**

**If writing, answer Question 9 in the yellow answer book.
If laptop, answer in the screen marked Question 9.**

Question 9

Scott, a Texas collector of rare and valuable sports cars and paintings, died and left a properly executed will that established a trust naming Tom and Carla as co-trustees. The trust was for the benefit of Barbara, Scott's minor daughter and sole heir. The sports cars and paintings were valued at \$10 million.

The trust provided that its purpose was to "protect and preserve the condition and value of the rare sports cars and paintings" that were to be held "in trust" until Barbara turned 21. Further, the trust provided that: "Co-Trustees are released from liability for any negligent acts."

The rare sports cars were maintained in a special, temperature-controlled garage that was under 24-hour surveillance. The paintings were kept in a self-storage unit Carla rented from Self Store. Under the written rental agreement, if the renter failed to pay the rental fee, Self Store had the right to auction off the contents of the rented unit, but only after providing advance notice of the auction to the renter.

Without Carla's knowledge, Tom frequently used the sports cars for his personal use. When Carla found out what Tom was doing, she verbally told him he was taking a "huge risk" by driving the cars and he should stop. Two days later, while Tom was driving one of the sports cars, he was involved in an accident with a truck belonging to Big Company. Both Tom and the truck driver denied fault. No one was hurt, but the sports car was a total loss.

Shortly thereafter, Tom and Carla discovered that the rare paintings had been auctioned off by Self Store after Carla forgot to pay the rental fee. Self Store never provided the notice required under the agreement.

- (1) Did Tom and Carla breach any of their duties as Co-trustees under Texas law, and, if so, are they personally liable for any such breach? Explain fully.**
- (2) What claims and remedies does Barbara have as beneficiary under Texas law, and does she have standing to assert them? Explain fully.**

**If writing, answer Question 10 in the blue answer book.
If laptop, answer in the screen marked Question 10.**

Question 10

Pablo and Carolina purchased a home in Austin, Texas, and borrowed money from Bank to finance the purchase. Bank required Pablo and Carolina to obtain a credit life insurance policy issued by Insureco, a Texas insurance company. The policy provided that in the event of Pablo or Carolina's death, Insureco would pay the amount still owing on the loan.

During the insurance application process, an Insureco representative asked Pablo if he'd ever had any serious health issues and Pablo replied, "No." Thereafter, Insureco issued the policy.

Two years later, Pablo suffered an unexpected fatal heart attack. At the time of Pablo's death, \$150,000 remained owing on the loan.

Shortly thereafter, Carolina filled out a proper proof of claim and filed it with Insureco along with a copy of Pablo's death certificate. Thirty days later, Carolina received a letter from Insureco indicating only that the claim was "under review." Sixty days later, Carolina received another letter from Insureco stating only that the claim had been denied.

Carolina called Insureco and spoke with Agent, an Insureco employee. Agent told her that, based solely on the fact that "a mere two years" had passed since the inception of the policy, Pablo had "obviously lied about his health condition" when he said he'd never had any serious health issues at the time he applied for the policy. Therefore, Insureco denied the claim. Agent also told Carolina that Insureco's decision was "final and unappealable" and that Carolina had "no legal right" to pursue her claim any further.

Believing there was nothing else she could do, Carolina became severely distraught and was unable to go to work for several weeks. She ultimately required medical attention for emotional stress and hired an attorney for representation.

- (1) What violations, if any, of applicable Texas consumer protection laws were committed by Insureco and Agent? Explain fully.**
- (2) What damages and remedies, if any, are available to Carolina under applicable Texas consumer protection laws? Explain fully.**

**If writing, answer Question 11 in the orange answer book.
If laptop, answer in the screen marked Question 11.**

Question 11

In January 2015, Adam, Bill, and Chuck validly formed a Texas Limited Liability Partnership called ABC Partners LLP (“ABC”). ABC engaged in the for-profit business of selling customized outdoor gas barbecue grills. ABC’s written Limited Liability Partnership Agreement included the following terms:

- The only partners would be Adam, Bill, and Chuck.
- Adam would serve as ABC’s Managing Partner.
- Bill and Chuck would be jointly responsible for designing and manufacturing ABC’s products.
- None of the partners would be liable to third parties for any debt, obligation, or liability of ABC, whether arising in contract, tort, or otherwise.
- Adam would not be liable to ABC for negligence, gross negligence, or intentional misconduct in the performance of his duties as Managing Partner.

In February 2015, First Bank agreed to loan ABC \$100,000 (the “Loan”). A promissory note designating ABC as “Borrower” and First Bank as “Lender” was signed on ABC’s behalf by Adam as “Managing Partner, ABC Partners LLP”, and by Bill and Chuck, each as “Partner, ABC Partners LLP.”

In June 2015, Customer was seriously injured when an ABC-manufactured grill exploded while Customer was attempting to ignite it. Several months before ABC sold the grill to Customer, both Bill and Chuck became aware of a defect in the design of the grill that might cause it to explode when ignited, but did nothing to fix it. They did not inform Adam about the defect, and Adam did not otherwise know or have reason to know of the defect’s existence. Customer filed suit to recover for his personal injuries, naming ABC, Adam, Bill, and Chuck as defendants.

In August 2015, ABC defaulted on the Loan. First Bank filed suit to recover the balance due on the Loan, naming ABC, Adam, Bill, and Chuck as defendants.

- (1) Which of the named defendants can be held liable in Customer’s lawsuit and which cannot be held liable? Explain fully.**
- (2) Which of the named defendants can be held liable in First Bank’s lawsuit and which cannot be held liable? Explain fully.**

**If writing, answer Question 12 in the purple answer book.
If laptop, answer in the screen marked Question 12.**

Question 12

In 2015, Alex and Bert, licensed Texas lawyers, formed Alex & Bert LP to practice law in Texas. They did not file any documents with the Texas Secretary of State, but did draft and sign a written partnership agreement containing the following provisions:

Alex will be the General Partner. We will split profits equally. Bert will not be personally liable for any of the debts or obligations of Alex & Bert LP.

Six months later, Alex and Bert asked Cathy to join their practice. Cathy and Bert were law school classmates, but Cathy never took the bar exam. Instead, she went to medical school and is now a licensed physician. Alex and Bert have proposed that they form a professional limited liability company in which all three licensed professionals will be members, sharing equally in the profits from Alex and Bert's law practice, and from Cathy's medical practice. Cathy is considering their proposal.

- (1) Is Alex & Bert LP a limited partnership or a general partnership? Explain fully.**
- (2) Can Alex, Bert, and Cathy lawfully form a professional limited liability company? Explain fully.**

This concludes the Texas Bar Examination.

Write the Honor Pledge on the back of this question booklet
before turning in your exam materials.

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